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CAUSE NO. 12,764

THE STATE OF TEXAS

VS.

BILLY JOE WARDLOW

§ IN THE DISTRICT COURT OF  
§  
§ TITUS COUNTY, TEXAS  
§  
§ 76TH JUDICIAL DISTRICT

STATEMENT OF FACTS

VOIR DIRE EXAMINATION

October 26, 1994

VOLUME 13 of 43 volumes

FILED IN  
COURT OF CRIMINAL APPEALS

OCT 11 1995

Troy C. Bennett, Jr., Clerk

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VOLUME 13

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1 CAUSE NO. 12,764

2 THE STATE OF TEXAS § IN THE DISTRICT COURT OF  
3 VS. §  
4 BILLY JOE WARDLOW § TITUS COUNTY, TEXAS  
§  
§ 76TH JUDICIAL DISTRICT

5  
6 STATEMENT OF FACTS

7 VOIR DIRE EXAMINATION

8 October 26, 1994

9 VOLUME 13 of 43 volumes

10  
11 Before Honorable Gary R. Stephens

12 Judge by Judicial Assignment

13 (Venue changed from Morris County, Texas)

14  
15 APPEARANCES

16  
17 ATTORNEYS FOR THE STATE OF TEXAS:

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23 and

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1                   On the 26th day of October, 1994, the  
2 above-entitled and numbered cause came on for hearing  
3 before said Honorable Court, Judge Gary R. Stephens of  
4 Midlothian, Texas, serving by judicial assignment in the  
5 District Court of Titus County, Texas, on change of venue  
6 from Morris County, Texas, and the following proceedings  
7 were had:

8                   THE COURT: Bring the first  
9 juror in.

10                  THE BAILIFF: Watch your step  
11 here.

12                  THE COURT: Right up here,  
13 ma'am.

14  
15                  LORI BETH HENRY, Potential Juror #372,  
16 was called as a Potential Juror and, having been  
17 previously sworn by the Court, testified as follows:

18  
19                  THE COURT: Ma'am, for the  
20 record, are you "Lori Henry?"

21                  THE POTENTIAL JUROR: Yes.

22                  THE COURT: "L O R I ?"

23                  THE POTENTIAL JUROR: Yes.

24                  THE COURT: Ma'am, I am Gary  
25 Stephens, I am presiding over this trial and jury

1 selection.

2 We have one lawyer present here  
3 representing the State of Texas and that's the District  
4 Attorney from Morris County, Mr. Richard Townsend.

5 We have two Defense Attorneys present,  
6 we have Mr. Bird Old, III.

7 MR. OLD: Hello.

8 THE COURT: Lance Hinson, Mr.  
9 Lance Hinson.

10 MR. HINSON: Good morning.

11 THE COURT: Next to Mr. Hinson  
12 the Defendant, Mr. Billy Wardlow.

13 Now, Ms. Henry, the lawyers have read  
14 your questionnaire, they are familiar with your answers  
15 and they are going to talk about some of those answers,  
16 they are going to discuss the principles of law involved  
17 in a death penalty case.

18 Now, ma'am, the lawyers are going to ask  
19 a lot of questions, the answers will let us know whether  
20 or not to put you on the jury.

21 In order to be a qualified juror you  
22 must be able to understand and follow the law, you don't  
23 even have to agree with the law, if you disagree with  
24 some aspect of law but you can still follow the law you  
25 are qualified but if you disagree with some aspect of our

1 law to the extent you can't follow it then you are not  
2 qualified.

3 We have also found over the years  
4 picking jurors on this type of case that even though most  
5 jurors are qualified that doesn't mean they are  
6 appropriate jurors for a death penalty case so we need  
7 to know something about what your opinions are, what you  
8 think about our laws.

9 The only way to find out is to ask  
10 questions. It may seem like you are on trial but you  
11 are not.

12 Frankly there are no right or wrong  
13 answers or right or wrong opinions, frankly we don't care  
14 what the opinions are and I don't mean to be rude about  
15 this but we very much care to understand what those  
16 opinions are so we want you to just open up and share  
17 them with us without caring whether we agree or disagree  
18 with you.

19 If you have any question you stop us and  
20 ask us your questions.

21 If you are selected as a juror we can't  
22 talk to you after today so anything that is not clear you  
23 need to get cleared up today.

24 We also won't be able to tell you  
25 whether you are on the jury today, we are going to talk

1 to several jurors, make a decision on those and then talk  
2 to some more so it will probably be toward the end of  
3 next week.

4 Mr. Townsend, you may proceed.

5 MR. TOWNSEND: Thank you, Your  
6 Honor.

7  
8 VOIR DIRE EXAMINATION

9 BY MR. TOWNSEND

10  
11 Q Ms. Henry, I am Richard Townsend, I represent  
12 the State of Texas in this case and I want to emphasize  
13 to you the Judge has already told you that there are no  
14 right or wrong answers, just tell us what you think.

15 A Yes.

16 Q We are seeking, actively seeking the death  
17 penalty in this case.

18 I have read your questionnaire and I  
19 kind of have an idea how you feel about the death penalty  
20 and I want to talk to you a little more about the law in  
21 Texas and how the death penalty takes place and that sort  
22 of thing.

23 Your feelings about the death penalty,  
24 are those pretty much the feelings you have had ever  
25 since you were an adult or is this something that you

1 have changed over the last few years or is it just  
2 something you haven't thought about?

3 A Are you referring to something I wrote?

4 Q Your answer on the questionnaire.

5 A Okay. May I see that again?

6  
7 (Handed to the potential juror.)

8  
9 THE POTENTIAL JUROR: Pretty  
10 much. Yeah. Yes.

11 MR. TOWNSEND: Okay. Do you  
12 know of any reason why you couldn't serve on a jury and  
13 return a verdict that resulted in the death penalty of  
14 an individual if the evidence and the facts were  
15 appropriate?

16 THE POTENTIAL JUROR: I don't  
17 see why I couldn't return the verdict.

18 Q (BY MR. TOWNSEND) Let me talk to you a little  
19 bit about murder in Texas, and there are two basic types  
20 of murder, one is just a plain non-capital murder in  
21 which a person intentionally or knowingly murders another  
22 individual or causes the death of another individual and  
23 that is to say that they have done it without any legal  
24 justification or excuse, which, you know, it wasn't self  
25 defense and it wasn't an accident or something of that

1 nature that intentionally caused this person's death.  
2 The range of punishment in that is up to life  
3 imprisonment but they could not receive the death  
4 penalty.

5 On the other hand there is what we call  
6 "capital murder" and this case is about capital murder.

7 Capital murder is murder plus something  
8 else, it's that plain murder we talked about plus it has  
9 to have another element.

10 A Yes.

11 Q And that other element is that this murder has  
12 to be of a police officer, fireman in the line of duty,  
13 has to be a murder for hire, a murder that is done during  
14 the commission of a robbery, burglary, rape so you can  
15 see aside from murder you have got to have something else  
16 that we talked about.

17 A Yes.

18 Q There is a sheet of paper up there that I would  
19 like for you to look at, it's the indictment in this  
20 case.

21 THE COURT: To your left right  
22 there. (Indicating)

23 MR. TOWNSEND: If you will  
24 just read that over to yourself, just the top half there.  
25 (Indicating)

1 THE POTENTIAL JUROR: Okay.

2 Q (BY MR. TOWNSEND) Then we'll talk about it.

3 A Okay.

4 Q Can you see based on what you have read there  
5 that if the State could prove that that would be what we  
6 just discussed as a capital murder rather than just a  
7 regular murder?

8 A Yes.

9 Q The kind of jurors we need in a death penalty  
10 case, Ms. Henry, are those kind of jurors who can keep  
11 an open mind throughout the trial, first as to guilt or  
12 innocence.

13 A Yes.

14 Q And then later on when you get into this  
15 punishment phase of the trial keep an open mind as to  
16 whether the proper punishment should be a life sentence  
17 or the death penalty.

18 A Yes.

19 Q Some people think, you know, if a person is  
20 convicted of capital murder they automatically get the  
21 death penalty. That's not the way it is. We need those  
22 kind of jurors who can follow the law all the way through  
23 the trial.

24 The first phase of a capital murder  
25 trial you will hear evidence in relation to the crime

1 that is alleged to have been committed then after you  
2 hear that evidence the jury will make a decision as to  
3 whether the defendant is guilty or not guilty, if they  
4 find the defendant not guilty then of course the trial  
5 is over but on the other hand if they find the defendant  
6 guilty then you go into what is called the punishment  
7 phase of the trial and decide what the proper punishment  
8 should be.

9 But the important thing to remember is  
10 that none of this is automatic, you don't automatically  
11 give the -- give a life sentence, you don't automatically  
12 give the death penalty, it's only done after you have  
13 heard more evidence during the punishment hearing.

14 A Yes, sir.

15 MR. OLD: I object. That is  
16 a misstatement of the law. By finding a person guilty  
17 -- a person guilty of capital murder you have in effect  
18 given him a life sentence at least.

19 MR. TOWNSEND: If I misstated  
20 that --

21 THE COURT: I'm going to  
22 sustain the objection.

23 I do agree with you, Counsel, I don't  
24 know that it was totally a misstatement but the net  
25 effect of finding a person guilty is an automatic life

1 sentence so rephrase, Counsel.

2 MR. TOWNSEND: I'm not sure  
3 what I said but what I meant to say if a person is found  
4 guilty of capital murder you are not automatically going  
5 to give them a life sentence or you are not going to  
6 automatically give them the death penalty, they are going  
7 to receive one or the other and neither one is automatic.

8 THE POTENTIAL JUROR: When we  
9 -- but when we go into the punishment phase should it get  
10 to that at this trial, you are seeking the death penalty  
11 so the decision is whether to agree with that or not?

12 Q (BY MR. TOWNSEND) Your decision would be  
13 either to go along and actually -- and I will explain  
14 that a little more but actually you are not going to just  
15 go in there and say, "Well, do you believe he should get  
16 a life sentence or do you believe he should get a death  
17 penalty?"

18 A Yes.

19 Q You are going to answer a couple of Special  
20 Issue questions, the answer to those questions will  
21 determine what the sentence is, of course you are going  
22 to know --

23 A Okay.

24 Q -- you are going to know, "If I answer this way  
25 it will be a life sentence, if I answer this way it will

1 be the death penalty", okay?

2 A Okay.

3 Q If you will there is a sheet up there that  
4 looks kind of like that. (Indicating)

5 A Oh, yes.

6 Q If you would glance at that I will go over that  
7 with you.

8 The first phase of a murder, a capital  
9 murder trial -- excuse me, the guilt or innocence phase  
10 at the top then you are going to hear evidence about the  
11 guilt or innocence of the defendant then you will -- the  
12 jury will vote, if you vote "Not guilty" of course the  
13 trial is over, if you vote "Guilty" then you go to the  
14 next phase.

15 The next phase is what we call the  
16 "punishment phase", it's down there in the middle of the  
17 page. (Indicating)

18 A Yes.

19 Q Then you are going to hear more evidence and  
20 the kind of evidence you hear at that point of the trial  
21 is not evidence of whether the defendant committed the  
22 crime or not because you have already decided that he's  
23 guilty, this is going to be evidence that relates to the  
24 punishment issue.

25 And the type of evidence that would be,

1 of course, it could be just almost anything but you would  
2 tend to hear possibly things like family history, whether  
3 the defendant had a religious background or not, if --  
4 has the defendant been involved in trouble before, things  
5 of that nature.

6 You might hear psychiatric testimony,  
7 you know, all sorts of stuff you might hear.

8 But anyway after you have heard that  
9 evidence then you vote on Special Issue #1, and we'll  
10 talk about that Special Issue, those Special Issues in  
11 a moment, but first you vote on Special Issue #1.

12 If you voted "No" on that then the  
13 defendant would get a life sentence, if on the other hand  
14 you voted "Yes" then you go to Special Issue #2.

15 When you got to Special Issue #2 if you  
16 voted "Yes" the defendant would get a life sentence, if  
17 you voted "No" the defendant would get the death penalty  
18 so you are going to know before you vote, okay, "If I  
19 vote 'Yes' to Number One and 'No' to Number Two the  
20 defendant is going to get the death penalty."

21 MR. OLD: We are going to  
22 object. That's a misstatement of the law, simply one  
23 person voting doesn't give anyone anything, it's a  
24 composite of the jury finding beyond a reasonable doubt  
25 being a unanimous issue.

1 THE COURT: That was his  
2 intent. I'm going to overrule. You might clarify that.

3 MR. TOWNSEND: I say, when you  
4 vote, I mean the jury as a whole, of course one person  
5 can't decide anything.

6 THE POTENTIAL JUROR: Is it  
7 "majority?"

8 Q (BY MR. TOWNSEND) No, ma'am.

9 A "Unanimous", it has to be "unanimous?"

10 Q I will let the Court --

11 THE COURT: Yes, ma'am.

12 In order to return a penalty of course  
13 if you answer the first question "Yes" and the second  
14 "No", all 12 must be in agreement, if must be a unanimous  
15 sentence.

16 MR. TOWNSEND: I know that's  
17 kind of confusing since you don't even know what those  
18 Special Issue questions are but we are going to go over  
19 that in just a minute.

20 Do you feel like you understand that?

21 THE POTENTIAL JUROR: If you  
22 answer "No", if the jury answers "No" to Special Issue  
23 #1 is that a majority vote or unanimous?

24 THE COURT: That can be by 10  
25 or more.

1 THE POTENTIAL JUROR: How many  
2 jurors are there?

3 THE COURT: Twelve.

4 That's the first time I have had that  
5 question asked.

6 MR. TOWNSEND: Me, too.

7 If you will, now, there is a sheet up  
8 there that on the top it says "Special Issues", have you  
9 got it?

10 THE POTENTIAL JUROR: Yes.

11 Q (BY MR. TOWNSEND) Okay. If you will read to  
12 yourself Special Issue #1 then we'll talk about that.

13 A Just "Number One?"

14 Q Yes. Just Number One, we'll talk about it then  
15 we will talk about Number Two in a little bit.

16 A Okay.

17 Q Special Issue #1 refers to the future  
18 dangerousness of the defendant, would you agree with  
19 that?

20 A Yeah.

21 Q Okay. I will point out a little bit of a  
22 wording in there and see that word "probability?"

23 First before I point that out; just like  
24 in the guilt or innocence phase when the State has to  
25 prove beyond a reasonable doubt that the defendant is

1 guilty?

2 A Yes.

3 Q On Special Issue #1 the State also has to prove  
4 beyond a reasonable doubt that issue so we have got to  
5 prove to you beyond a reasonable doubt that there is a  
6 probability of the defendant committing further acts of  
7 violence.

8 A Yes.

9 Q Now, that word "probability", you know, that's  
10 not saying it's a certainty, it's not saying that we can  
11 guarantee that he's going to.

12 A Yes.

13 Q And you are not being asked as a member of the  
14 jury to predict whether he will or not, it's just in it  
15 can the State prove that probability that he would.

16 A Right.

17 Q Okay. Another thing I want to refer you to is  
18 that phrase where it says "criminal acts of violence."  
19 (Indicating)

20 A Yes, sir.

21 Q Now, the Defendant in this case is on trial for  
22 capital murder, certainly that's the criminal act of  
23 violence, we are required to prove that there's a  
24 probability that he would -- prove some other criminal  
25 act of violence, it doesn't necessarily mean that we

1 would prove to you that he would commit another murder,  
2 just that he would commit some act of violence whether  
3 it be assault, rape, murder, attempted murder, whatever.

4 Are you with me on that?

5 A "Carjacking?"

6 Q There is violence involved in carjacking. Yes.

7 So are you clear on that part?

8 A Yes. I think so.

9 Q On Special Issue #1 if after -- you keep in  
10 mind that you are not going to decide Special Issue #1  
11 until you have heard all this evidence I talked about  
12 during the punishment hearing, now, in deciding your  
13 answer to Special Issue #1 you can mentally go back to  
14 that guilt or innocence phase of the trial, remember what  
15 you heard there and then also consider that evidence that  
16 you have heard during the punishment hearing.

17 But to be a fair and impartial juror,  
18 the kind of jurors we need in a capital murder case we  
19 have got to have those type jurors who cannot say, "Well,  
20 I found him guilty of capital murder so automatically I'm  
21 going to have to answer 'Yes' to Special Issue #1"  
22 because, see, they are not withholding their  
23 determination or their decision until they have heard all  
24 the evidence.

25 A Yes.

1 Q Do you think you could wait and wait for the  
2 punishment hearing before making your --

3 THE COURT: I'm sorry. Could  
4 you repeat that question?

5 MR. TOWNSEND: Do you think  
6 you could wait until you have heard all this evidence  
7 during the punishment hearing before making your decision  
8 on Special Issue #1?

9 THE POTENTIAL JUROR: Yes.

10 Q (BY MR. TOWNSEND) Consider that evidence as  
11 well. It is the evidence that you heard on guilt or  
12 innocence?

13 A Yes.

14 Q If you will read Special Issue #2 and we'll  
15 talk about that.

16 A Okay.

17 Q Now, I believe basically you can boil that down  
18 to saying, "Well, I have already decided the defendant  
19 guilty, the jury has, the jury has already decided that  
20 he probably is a danger to society" because if you voted  
21 "No" on Special Issue #1 that he was not probably going  
22 to be dangerous in the future you wouldn't even be  
23 looking at Special Issue #2 because that would have  
24 automatically given him a life sentence, but assuming  
25 you voted "Yes" on Special Issue #1 then you look at

1 Special Issue #2.

2 And I think that's basically saying, is  
3 this a death penalty case, is this a death penalty type  
4 defendant?

5 What you are being asked there is to  
6 decide if there's sufficient mitigating circumstances  
7 that would reduce the defendant's moral blameworthiness  
8 for the crime?

9 And I can't tell you what would be  
10 "sufficiently mitigating" to you or to me or to anyone  
11 else, different people on the jury might look at  
12 different types of evidence in a different way, something  
13 that might make you feel like, "Well, this piece of  
14 evidence of this combination of evidence is enough to  
15 convince me that the defendant should receive a life  
16 sentence rather than the death penalty" whereas someone  
17 else might look at the same evidence and not agree with  
18 me on that so -- but also I want you to understand on  
19 Special Issue #2 it's unlike guilt or innocence and  
20 unlike Special Issue #1 in that the State does not have  
21 to prove anything to you beyond a reasonable doubt. We  
22 don't have to prove anything to you period, it's just  
23 strictly a matter of your opinion and basically you are  
24 just looking at everything you have heard from the guilt  
25 or innocence phase, everything that you have heard during

1 the punishment hearing and you are saying, "Okay, I will  
2 listen to all this, I will have considered all of it,  
3 now, is there something in there that makes me feel like  
4 this case and this defendant should receive a life  
5 sentence rather than the death penalty."

6 A Okay.

7 Q Is that okay? Is that something you feel like  
8 you understand? Do you have any problem with that?

9 A Sure. Is that done at the same time once you  
10 hear the evidence in the punishment phase then you go to  
11 a room to discuss and answer these two questions?

12 Q Right. When you go back deliberate the guilt  
13 or innocence then you are going to go out and tell the  
14 Court -- the jury will announce their ruling, this is  
15 after you have heard all this punishment evidence, the  
16 jury will go back again, deliberate punishment, when you  
17 are deliberating punishment you will answer one and if  
18 you answer "No" the defendant will get a life sentence  
19 and if you answer "Yes" you move on to Number Two.

20 You don't come back out, is that what  
21 you are asking? --

22 A Yes, sir.

23 Q You will decide Number One, if your answer is  
24 "Yes" then you go straight into deciding Number Two.

25 A And what is a life sentence in Texas?

1 MR. TOWNSEND: I believe I  
2 will let the Court answer that.

3 THE COURT: Ma'am, in any life  
4 sentence a person is eligible in Texas for parole at some  
5 point in time. That doesn't mean he or she will get a  
6 parole but there is no "life without parole", if you  
7 convict a person of capital murder and the sentence is  
8 life as opposed to death that person will have to spend  
9 a minimum of 40 calendar years before that person can be  
10 considered eligible.

11 That doesn't mean in 40 years a person  
12 is turned loose, that means that person will be there a  
13 minimum of 40 years before the process can even begin.

14 You are also instructed, though, that  
15 you are not to take into account parole when you answer  
16 those questions, you are to answer those questions based  
17 on the evidence, not on what you think a life sentence  
18 is or should be.

19 THE POTENTIAL JUROR: Yes.

20 THE COURT: You answer the  
21 questions and then your answers, of course dictate what  
22 happens.

23 Mr. Townsend.

24 MR. TOWNSEND: Thank you.

25 Also on Special Issue #2 I want to talk

1 to you a little bit about the sort of evidence that you  
2 would hear. I have already talked to you about you might  
3 hear -- all kinds of evidence you might hear, the  
4 important thing in this regard is on both of these  
5 Special Issues during that punishment phase of the  
6 hearing you may hear all sorts of evidence and in order  
7 to be a fair and impartial juror we have got to have  
8 those people who can listen to that evidence and give it  
9 consideration.

10 Now, that's not to say you have to  
11 believe it, that's not to say that you have to give any  
12 weight to it, you know, you can listen to it and decide  
13 "That is very important" or you can listen to it and  
14 decide "That is not important" but the main thing is we  
15 have got to have jurors who are willing to listen and  
16 consider all the evidence, whether it's psychiatric  
17 testimony, whether it's testimony from family members,  
18 you know, anything.

19 Would you be able to listen and consider  
20 all the evidence irregardless of what type it was?

21 THE POTENTIAL JUROR: I think  
22 so.

23 MR. TOWNSEND: Okay.

24 THE COURT: Ma'am, a lot of  
25 us when we are asked questions say "I think I can" but

1 here we are going to have to pin you down to whether you  
2 can or can't.

3 When you are questioned I would like for  
4 you to be a little more affirmative, whether you can or  
5 not.

6 You said you think you can do it, I have  
7 got to know whether you can or can't.

8 THE POTENTIAL JUROR: I could  
9 consider all the evidence.

10 THE COURT: Thank you, ma'am.

11 MR. TOWNSEND: That's the  
12 question you have to be able to consider it, we are not  
13 going to get you to promise that you are going to decide  
14 every piece of evidence that you hear is really good,  
15 really worthwhile, but you will at least give it a fair  
16 shot before making your decision, at least you will  
17 listen and consider it?

18 Let me shift gears and talk to you a  
19 little bit about murder versus capital murder.

20 Okay. Now, you know from looking at  
21 that indictment that the Defendant is charged with a  
22 murder and robbery, basically?

23 THE POTENTIAL JUROR: Okay.

24 Q (BY MR. TOWNSEND) Let's assume that you get  
25 to the end of the trial and the jury goes back there and

1 they decide while the State has proved their case to us  
2 beyond a reasonable doubt that the defendant committed  
3 a murder but they didn't quite prove that he committed  
4 the robbery.

5 Well, then, you would have to find the  
6 defendant guilty of murder but not capital murder.

7 Do you follow me?

8 A Right.

9 Q Well, in a murder the punishment range as I  
10 talked to you a little bit earlier is different than in  
11 a capital murder. In a murder the punishment range is  
12 from five years probation to 99 years or life in the  
13 penitentiary.

14 Now, that's a wide range of punishment  
15 and that, you know, there is of course a murder can be  
16 a wide range of different type crimes, you know, you can  
17 have extremely vicious murders or you can have something  
18 the Judge mentioned when you all were here a couple of  
19 weeks ago, you can have basically what is a mercy  
20 killing.

21 Are you familiar with that type murder?

22 A Someone that is maybe terminally ill?

23 Q Sure. Something like that.

24 But if you look at the murder statute  
25 that is still "murder" because you have intentionally

1 caused the death of another individual.

2 A Yes.

3 Q So even though it's certainly a different type  
4 crime it's still "murder."

5 A Were different but it's still "murder."

6 Q So there's a broad range of punishment there  
7 and the broad range of punishment in murder and the kind  
8 of juror we have to have is the kind of juror that can  
9 consider the full range of punishment in a case.

10 The full range of punishment in murder  
11 is from five years probation to 99 years, would you  
12 consider the full range?

13 A Yes.

14 Q We are not trying to get you to look in and  
15 say, "Well, I would give somebody five years probation"  
16 or "I would give somebody 99 years", but you would  
17 consider the full spectrum?

18 A Yes.

19 Q In criminal cases the burden of proof is with  
20 the State of Texas, we have to prove our case to you  
21 beyond a reasonable doubt.

22 Now, that is -- that is something that  
23 we accept, we know that is our burden and we are here to  
24 meet that.

25 On the other hand, the defendant has no

1 burden of proof, it's not up to them to prove that he's  
2 innocent, it's up to us to prove that he's guilty.

3 Is that something that you are familiar  
4 with and comfortable with?

5 A Yes.

6 Q Okay. Along with that burden of proof goes  
7 what you might call or what is the constitutional Fifth  
8 Amendment privilege and that is the privilege of the  
9 defendant not to testify and that's his choice.

10 Of course the defendant has a right to  
11 testify if he wants to but he also has a right not to  
12 testify, is that something that you are familiar with?

13 A Yes.

14 Q We have got to have the type jurors who can be  
15 fair-minded and decide their decision on this case based  
16 on the evidence that they hear and not on something they  
17 didn't hear.

18 And when I say that I mean if the  
19 defendant chooses not to testify would you be able to put  
20 that aside and not use that as part of your evidence or  
21 part of your decision-making process?

22 A Yes.

23 Q Okay. Understanding that, you know, it's human  
24 nature to be curious as to why the defendant didn't  
25 testify or think, "Boy, if that was me I would sure want

1 to tell them what happened" or something, you know?

2 A Yes.

3 Q And that's human nature and that's okay and we  
4 are not saying that you should be able to put that  
5 completely out of your mind, just that you not consider  
6 it when you are determining guilt or innocence in any  
7 way, could you do that?

8 A Yes.

9 Q That Fifth Amendment privilege carries over  
10 into the punishment phase of the trial also. You found  
11 someone guilty of capital murder let's say and you are  
12 thinking and trying to decide what the proper punishment  
13 would be and you might think, "Well, you know, if that  
14 fellow just gets up here and tells me he's sorry it might  
15 make me feel a little differently about this."

16 But the Fifth Amendment privilege still  
17 applies and he doesn't have to get up there and testify  
18 unless that is something that he chooses to do.

19 In order to be a fair and impartial  
20 juror, qualified juror in this case you have got to be  
21 able to also in that punishment phase make your decision  
22 based on the evidence you hear and not hold it against  
23 the defendant in any way if he chooses not to testify  
24 during that part of the hearing.

25 In any kind of criminal trial, Ms.

1 Henry, you are going to have testimony from a lot of  
2 different kinds of people. You may have testimony from  
3 psychologists, you may have testimony from ministers, you  
4 may have testimony from police officers, you may have  
5 testimony from someone that you have heard of or someone  
6 that you do not even know but the important thing is to  
7 remember is that in order to be fair and impartial you  
8 have got to be able to start all those witnesses out at  
9 the same spot on the track, not give anybody a head start  
10 because they are a police officer or because they are a  
11 minister or doctor or whatever.

12 When I say that what I'm really saying  
13 is that you start everyone out at the same place, you  
14 listen to their testimony and after they have testified  
15 then decide whether their testimony was important,  
16 unimportant, believable, unbelievable, can you do that?

17 A Yes.

18 THE COURT: Thirty minutes.

19 MR. TOWNSEND: Thank you, Your  
20 Honor.

21 Ms. Henry, in some criminal trials you  
22 will have statements presented, written statements or you  
23 might call them confessions from the defendant in a  
24 criminal trial, if that confession was presented to you  
25 I would expect that the Judge would instruct you -- let's

1 just assume for the moment that you believe the  
2 confession is true, you believe that written statement  
3 is true, what the person said in there when he admitted,  
4 do you think -- whatever, you believe that that is true.  
5 The Judge is going to instruct you that you have got to  
6 find beyond a reasonable doubt that that confession was  
7 voluntary before you can use it as evidence.

8 Now, you already -- we are assuming this  
9 but we have already assumed that you have decided the  
10 confession is true?

11 THE POTENTIAL JUROR: Pardon  
12 me?

13 Q (BY MR. TOWNSEND) Let's just assume, if you  
14 will assume for me that you have decided that the  
15 confession or written statement is true.

16 A Okay.

17 Q That he's telling the truth when he wrote that  
18 down but you decide that we haven't proved to you beyond  
19 a reasonable doubt that it was voluntarily made because  
20 of lack of Miranda Warning, because of coercion or, you  
21 know, whatever. You have decided that we haven't proved  
22 to you beyond a reasonable doubt that it was voluntary.

23 I believe the Court, the Judge would  
24 instruct you that if you found that that statement was  
25 not voluntary that you should not use that as evidence,

1 that you should not use that in your deliberation and not  
2 consider it in any way in returning a guilt or innocence.

3 And in order to be a qualified juror we  
4 have got to have people who can put that aside if in fact  
5 they decided that we have not proved the voluntariness  
6 of that statement, are you with me?

7 A Yeah.

8 Q Can you do it?

9 A I think it's tough for anyone.

10 Q That is tough.

11 You know we are not asking you to, you  
12 know, say, "Well, I'm going to remove that from my mind",  
13 of course you can't remove it from your mind but you have  
14 got to be able to not necessarily remove it from your  
15 mind but not use it in any way in considering guilt or  
16 innocence.

17 A Yeah.

18 Again, just like you don't like to nail  
19 down things, I don't like to nail down things either but  
20 I feel that I could, you know, follow the instruction in  
21 not letting that weigh in the decision.

22 Q When I say I expect the Judge would instruct  
23 you that way, basically I'm saying the Judge is going to  
24 tell you what the law is and I believe that's what the  
25 law is and are you telling me that in that respect you

1           could follow the law?

2           A           I could follow the law.

3           Q           Okay. What I showed you up there or what you

4           looked at a little earlier was an indictment.

5           A           Yes.

6           Q           Do you understand, probably from the Judge's

7           instruction a couple of weeks ago that an indictment is

8           not evidence whatsoever, would you be able to in your

9           decision-making process, would you be able to consider

10          that indictment as no evidence and not use it in any way?

11          A           This is what you are saying that you are going

12          to prove?

13          Q           Right. All that is, that's just a charge.

14          A           Right.

15          Q           That is not evidence at all.

16          A           Right.

17          Q           Ms. Henry, I have been asking you a lot of

18          questions and I appreciate your openness and appreciate

19          your answers.

20                      Is there any question that you might

21          have of me or of the Court that you can think of or just

22          anything that you might want to say that maybe I haven't

23          given you a full opportunity to say?

24          A           I can't think of anything at this time.

25          Q           Okay. Let me ask you a little bit about the

1 Defense Attorneys in this case, Mr. Old and Mr. Lance  
2 Hinson; do you know either one of these guys?

3 A I know which one Mr. Old is but we have never  
4 met.

5 Q There's nothing in that relation --

6 A I -- I feel like I have seen him before today.

7 Q -- there's nothing in that relationship that  
8 would cause you any problem so far as being fair and  
9 impartial?

10 A No.

11 Q Do you know anything about the facts of the  
12 case?

13 A No.

14 Q Nothing at all?

15 Ms. Henry, now that we have talked about  
16 the death penalty quite a bit, looking back on the first  
17 page of your questionnaire -- do you have that in front  
18 of you? (Indicating)

19 A Yes.

20 Q Now, do you understand that in Texas that the  
21 death penalty is only available during capital murder  
22 cases and not just regular murder cases?

23 A Do I understand that in Texas that the death  
24 penalty is only in capital murder and not any other type  
25 of murder case?

1 Q Other murder case?

2 A I do now.

3 Q Okay.

4 A I do now.

5 Q You do now?

6 Okay. Well, these questions that you  
7 were asked here refer to murder cases, these questions  
8 on the first page.

9 A Yes.

10 Q And so your answers related to that answer down  
11 at the bottom of the first page, if you are in favor of  
12 the death penalty in some murder cases do you agree that  
13 a life sentence rather than the death penalty would be  
14 appropriate under the proper circumstances, and you  
15 answered "No."

16 Now that we have discussed the law and  
17 now that we have discussed how the law works in regard  
18 to the death penalty, in order to be a qualified juror  
19 we have got to have people who are not biased and  
20 prejudiced toward a life sentence or biased and  
21 prejudiced toward the death penalty if that -- I have  
22 heard jurors say, "Well, you know, I'm just -- I don't  
23 believe in the death penalty and I'm not ever going to  
24 give anyone the death penalty."

25 See, that person is not a qualified

1 juror because they can't wait and hear all the evidence  
2 and fairly decide, you know, what the proper punishment  
3 should be.

4 On the other hand, if a person cannot  
5 conceive of, you know, this person is biased toward the  
6 death penalty as opposed to being biased against the  
7 death penalty then they are not fair and impartial,  
8 either.

9 And what I need to know from you is if  
10 a person is found guilty of capital murder can you give,  
11 after hearing all the evidence can you make your decision  
12 on those Special Issues and if you felt the defendant  
13 was appropriate for it give a death penalty and if you  
14 felt the evidence was appropriate for it give a death  
15 sentence?

16 A Yes. I could.

17 Q So you are not locked in and saying, "If I find  
18 a person guilty of capital murder I just don't believe  
19 in the death penalty and I couldn't give it?"

20 And on the other hand you are not locked  
21 in to say, "Well, I am automatically going to give the  
22 death penalty", either?

23 You could go either, depending on the  
24 facts of the case and the evidence?

25 A I feel that that is part of considering the

1 full range of punishment available.

2 Q Right.

3 A I think it would be my duty to consider the  
4 choices.

5 Q Right.

6 Looking back at Special Issue #1 it  
7 talks about future dangerousness, let's say that you have  
8 decided that a person is guilty of capital murder then  
9 you heard this evidence on future dangerousness and you  
10 have considered it and you have decided the answer is  
11 "Yes" and the -- but then at that point you have got to  
12 consider Special Issue #2, you have already found a  
13 person guilty of capital murder, you have already decided  
14 that they are probably going to be dangerous in the  
15 future, we need the kind of person on the jury who can  
16 be fair and impartial and consider all that evidence  
17 again before deciding Special Issue #2 and not  
18 automatically say, "Well, if he committed capital murder  
19 and if he's going to be dangerous in the future I'm just  
20 going to answer 'No' on number two. I don't even need  
21 to think about it."

22 Would you be able to go back and  
23 reconsider everything, all the evidence that you have  
24 heard before making your answer to Special Issue #2?

25 A Yes.

1 Q Okay. Keeping in mind, Ms. Henry, basically  
2 what we are asking you to -- each time, well, whether  
3 it's guilt or innocence, Number One or Number Two, we are  
4 asking you to go back and reconsider everything before  
5 making your decision, not make an automatic decision at  
6 any stage but consider all the evidence before --  
7 consider all the evidence before making a decision on any  
8 of those.

9 And you said you could do that?

10 A Yes.

11 MR. TOWNSEND: I'll pass the  
12 juror, Your Honor.

13 THE COURT: Let's take about  
14 five minutes then we will start with the Defense.

15 You may step down, you can just go right  
16 there.

17  
18 (Recess.)

19  
20 (The following occurred in the presence  
21 and hearing of the potential juror:)

22  
23 THE COURT: Ms. Henry, are you  
24 ready for some more questions?

25 THE POTENTIAL JUROR: I guess

1 so.

2 THE COURT: Okay.

3 Mr. Old.

4  
5 VOIR DIRE EXAMINATION

6 BY MR. OLD

7  
8 Q Ms. Henry, I have been introduced to you, I am  
9 Bird Old.

10 You indicated you perhaps knew me on  
11 site or knew me by reputation or otherwise?

12 A Yes, sir.

13 Q You and I have never had any -- never met?

14 A "Never met formally?" No.

15 Q Anything in what you have heard about me, my  
16 reputation that would go against Mr. Wardlow?

17 A No.

18 Q Now, I'm a lawyer and Mr. Townsend is a lawyer  
19 also, he represents the State of Texas, I represent Mr.  
20 Wardlow along with Mr. Hinson.

21 Mr. Hinson and I represent Mr. Wardlow  
22 who is charged with a crime.

23 Now, simply because Mr. Townsend works  
24 for the State of Texas would he have more credibility  
25 with you than I would because I work for a man that is

1 charged with a crime?

2 A No.

3 Q Do you still have your questionnaire in front  
4 of you?

5 THE COURT: It's right here.

6 (Indicating)

7 THE POTENTIAL JUROR: Yes.

8 MR. OLD: You indicate on the  
9 first page that you are in favor of the death penalty,  
10 you checked "Yes" and then you were asked to explain your  
11 answer.

12 THE POTENTIAL JUROR: Yes.

13 Q (BY MR. OLD) And I believe we gave you five  
14 lines to explain and I certainly doubt if that's adequate  
15 to give anything on that shorthand rendition.

16 Your first statement is "If a person is  
17 to be imprisoned for the remainder of his life he should  
18 be put to death."

19 Can you expound some on that and tell  
20 me your thinking behind that statement, what led you to  
21 that opinion?

22 A I just feel that the person's term that would  
23 extend beyond what would be the person's natural life is  
24 just in essence placing him out of society for the rest  
25 of his life so why should we support the living within

1 prison walls?

2 Q Let me ask you something; is 40 years in any  
3 circumstance pretty well equal to the rest of someone's  
4 meaningful life to you?

5 A Not in a young person that wouldn't be 50 years  
6 old or something.

7 Q Do you understand that is something that you  
8 are not to consider, you will be told you are not to  
9 consider the rules and laws of parole?

10 A Right. Right.

11 Q Now, if I understand that instruction correctly  
12 it may -- you should consider life as life and not  
13 consider the possibility of parole.

14 A Okay.

15 Q Okay.

16 A Okay.

17 Q And you would agree, I mean in what the Judge  
18 told you what would probably be -- you will be instructed  
19 not to consider -- that you are not to consider the  
20 possibility of parole and I mean as the Judge told you  
21 just because it says you do 40 calendar years or what we  
22 call "doing 40 flat" that it doesn't mean by any means  
23 that someone is going to parole after 40 years.

24 A Right.

25 Q So in effect if he gets a life sentence you

1 have got to assume that you are giving them life?

2 A "Natural life or 40 years minimum?"

3 Q Giving them life.

4 THE COURT: Ma'am, the  
5 sentence you assess is life, what the Board of Pardons  
6 and Paroles does is out of your hands, my hands and  
7 everyone's hands.

8 A life sentence is a life sentence but  
9 in Texas there is a possibility of parole at some point  
10 in time.

11 That point in time in a capital case is  
12 40 years or longer, it may be less than that in some case  
13 but in capital murder it's 40 minimum but you can't  
14 assume that in 40 years that you get turned loose because  
15 a life sentence is a life sentence period. And if a  
16 person is on parole they are on parole for the remainder  
17 of their life because there's a life sentence hanging  
18 over them.

19 So like Mr. Old is telling you, you do  
20 have to assume that a life sentence means exactly that.  
21 For you to do anything other than assume that is  
22 speculating on what these rules and regulations will be  
23 years from now in the future and that is improper.

24 MR. OLD: Now, can you follow  
25 the instructions as the Judge has explained them? Can

1 you consider life to be a life sentence?

2 "Yes" or "No", please, based on what you  
3 now know and what the Court now tells you and will tell  
4 you to be in his charge?

5 THE POTENTIAL JUROR: Consider  
6 a life sentence to be a life sentence?

7 Yes. I think I can.

8 Q (BY MR. OLD) Okay. Does the fact that you now  
9 know that the eligibility for parole starts after 40  
10 calendar years, would that influence you as to whether  
11 or not to give a life sentence?

12 A I feel like it does.

13 Q And you are answering me affirmatively, you  
14 think that -- that those instructions and the fact you  
15 know life equals at least 40?

16 A Yes.

17 Q You think that is going to influence your  
18 verdict and decision in this case?

19 A Well, I need some clarification on "influence."

20 Q Would that be something that you would consider  
21 in arriving at your verdict?

22 A Oh, that a life sentence would be a minimum of  
23 40?

24 No.

25 I think we are talking about what form

1 of punishment is appropriate.

2 Q But I mean are you going to --

3 A Speaking of life.

4 Q -- are you going to consider the effect of your  
5 answer that Issue #1 as to "Yes" or "No", are you going  
6 to consider what you know about life sentences?

7 A As to whether --

8 Q I believe Mr. Townsend told you a jury answers  
9 that first issue "No", it results in a life sentence.

10 A I don't feel like I can consider the punishment  
11 in deciding my answer to be Number One.

12 Q You think it would influence that answer is my  
13 question?

14 A Pardon?

15 Q Do you think what you have now been told about  
16 a life sentence, 40 years before parole would influence  
17 you in answering that question?

18 And I'm not asking you how you would  
19 answer it but would it be something that you would think  
20 about in answering that question?

21 You know, I mean you will be told the  
22 outcome of your answer, you have already been told and  
23 the Court in its charge, written instruction will tell  
24 you the effect of the answer.

25 A Yes.

1 Q Now what we have talked about life, 40 years  
2 and the Court's instruction that you are to consider life  
3 is life, is that going to be something that goes to the  
4 answer to that question?

5 A I don't think it's appropriate. We have to  
6 decide if they prove beyond a reasonable doubt that it's  
7 a probability of committing criminal acts in the future.

8 Q You are saying that is -- I mean if you knew  
9 -- I mean if let's say the instruction was different,  
10 let's say it says life --

11 MR. TOWNSEND: Object, Your  
12 Honor. That's not relevant "If an instruction is  
13 different", the instruction is Special Issue #1, she has  
14 answered that she can answer that question based on the  
15 evidence and not on anything about parole.

16 THE COURT: Sustained.

17 MR. OLD: Now, in answering  
18 Special Issue #2 can you tell me in your own words what  
19 Special Issue #2 asks you as a juror?

20 THE POTENTIAL JUROR: Okay.  
21 Special Issue #2 is asking whether after hearing all the  
22 evidence in both phases is there something in there that  
23 I feel like would -- in a person's background or as it  
24 says here, "character, background, life circumstances",  
25 I suppose that would reduce his responsibility in the

1 offense that he's accused of.

2 Q (BY MR. OLD) Would the instruction as to what  
3 we have talked about about parole in answering that  
4 question, the effect of the answer is if you answer that  
5 question "Yes" it's a life sentence, if you answer it  
6 "No" it's a death sentence, would what we have talked  
7 about about parole and what you are not to consider,  
8 could that influence your answer to that question?

9 A No.

10 Q I mean I want to ask you a question about some  
11 types of evidence you might hear as to that issue, I'm  
12 not asking you whether to predetermine on how you would  
13 act on that evidence, my question is would you reject it  
14 as evidence, that is something that you would not weigh  
15 as evidence, a juror's duty is to weigh the evidence --

16 MR. TOWNSEND: I believe the  
17 juror has the right not to weigh evidence if they decide  
18 there's no weight to the evidence, all they have got to  
19 do is listen to it and consider it.

20 THE COURT: I think you are  
21 correct, Mr. Townsend.

22 I will ask the Defense to rephrase.

23 I think certainly the juror can weigh  
24 or not weigh, I think the question is does the juror have  
25 a predisposed bias toward the type of evidence, is it

1 something that they would similarly reject without giving  
2 consideration?

3 MR. OLD: By "weigh" I was  
4 asking you if you would not act on it but consider it as  
5 a type of evidence that you would take into consideration  
6 on mitigation.

7 Would you have a prejudice against --  
8 I'm going to ask you about several different kinds of  
9 evidence as to being evidence to consider in mitigating  
10 evidence, would you consider evidence of age as  
11 mitigation, as mitigating?

12 THE POTENTIAL JUROR:  
13 Possibly.

14 Q (BY MR. OLD) I am not -- you could conceive  
15 of a case where you think you could consider that in  
16 mitigation?

17 A Yes.

18 MR. TOWNSEND: I object to the  
19 form of the question, he's asking could they consider  
20 that as mitigation, the wording that he uses implies that  
21 they have to consider that mitigating and I think the  
22 proper form of the question is "Will they consider that  
23 evidence when they are determining whether there's any  
24 mitigating factors or not", I don't think they are  
25 required to consider age as a mitigating factor or

1 consider anything a mitigating factor. They are just to  
2 consider whatever evidence is presented and then decide  
3 whether any of those elements are mitigating or not.

4 THE COURT: Again, I agree  
5 with you, we are getting into -- he may be taking -- he  
6 has stated the proposition correctly, all he is asking  
7 you, ma'am, is there some particular thing they are going  
8 to offer that you would just automatically reject and not  
9 give any consideration whatever.

10 You are not being asked to commit what  
11 you would or wouldn't do, what you think is or is not  
12 mitigating.

13 Mr. Old just wants to know if your mind  
14 is open to the proposition that age or whatever he might  
15 consider is proper, that you would consider in answering  
16 that question.

17 THE POTENTIAL JUROR: Issue  
18 #2.

19 MR. OLD: Yes.

20 THE POTENTIAL JUROR: Yes,  
21 sir.

22 Q (BY MR. OLD) Would you consider a person, the  
23 circumstances and environment of their raising, their  
24 family history?

25 A Yes.

1 Q Could you consider psychiatric evidence?

2 A Yes.

3 Q Is that an affirmative answer?

4 A Yes.

5 Q Would you consider somebody's religious and  
6 moral history?

7 A Yes.

8 Q Religious belief?

9 A Yes.

10 Q Would you consider their education or lack of  
11 education?

12 A Yes.

13 Q Going back to your questionnaire, the bottom  
14 of the page there is a statement and it really only asks  
15 of someone that is in favor of the death penalty and you  
16 have indicated that you are in favor of the death penalty  
17 and then the question is, "Do you agree that a life  
18 sentence rather than the death penalty would be  
19 appropriate under the proper circumstances?"

20 You answered "No" to that question?

21 A Yeah. --

22 Q Can you explain to me your answer, what you  
23 base that on and, first, is that still your answer or  
24 your opinion?

25 A Well, I was sort of surprised when I saw it,

1 too. Maybe I didn't understand that.

2 Q When you saw the question originally?

3 A Because it sounds like, you know, sounds like  
4 -- okay -- I think based on what I know now that there  
5 -- that after hearing evidence you are to make a decision  
6 on what is appropriate, I would have to say -- I would  
7 have to say "Yes" to that.

8 Q Let me -- what you are saying is you have now  
9 found the law requires certain things?

10 A Or allows certain things, I guess.

11 Q I'm not asking you whether you agree or  
12 disagree with the law, I'm asking you whether or not that  
13 first was your opinion the day you filled this out and  
14 that is still your opinion?

15 A You -- now, I would have to say that -- that  
16 this is not still my opinion, I'm not sure what I was  
17 basing that on at the time except that it would have to  
18 be limited knowledge.

19 Q Okay. Well, up above in your explanation you  
20 made it clear "I feel that a person should pay for a life  
21 with a life."

22 A "For a life with a life."

23 Q Now, I mean you weren't asked about -- in these  
24 questions about capital murder versus --

25 A Yeah.

1 Q -- non-capital murder, you were asked how you  
2 felt about the taking of a life.  
3 A In a lot of ways I feel that.  
4 Q Okay.  
5 A I do.  
6 Q Would it be a fair statement that your views  
7 and opinions on capital punishment favor the use of  
8 capital punishment?  
9 A "The death penalty?"  
10 Q Yes.  
11 A No. Not on what I now know.  
12 Q What is it that you now know that has changed  
13 the opinion?  
14 A Capital murder is -- that the only difference  
15 between -- between capital murder and murder is that  
16 murder was committed in the -- during the course of  
17 another --  
18 Q Of a robbery?  
19 A Yes. Another offense.  
20 Q How did that change your opinion?  
21 A Well, the answer was, you know, the question  
22 is not of capital murder, it was just asking "How do you  
23 feel about the death penalty?"  
24 Q And I mean is it a fair statement in your  
25 answers you were all for it?

1 A I would be more in favor of the death penalty  
2 as being an option in any murder case.

3 Q Okay. So your disagreement with the law --  
4 and there is nothing wrong with disagreement with the law  
5 -- is that the law that distinguishes between murder and  
6 capital murder, you think for murder the range of  
7 punishment ought to be from some number of years to death  
8 in all murder cases?

9 A Yes.

10 Q And based upon your other statements that if  
11 I understood you correctly, you correct me if I am  
12 misstating you, that you really felt like as a death  
13 penalty as opposed to life was a better punishment  
14 because you saw -- you didn't see a benefit of keeping  
15 somebody locked up for life?

16 A Right.

17 Q And whether the law calls it "capital murder,  
18 murder", "homicide", the taking of a life should be  
19 punished with the loss of life is your basic opinion?

20 A An option.

21 Q "An option?"

22 A "An option."

23 Q Do you think there is anything wrong -- wrong  
24 with being biased to a certain position?

25 A Whether the death penalty or --

1 Q You are not offended by the word -- by saying  
2 someone is "biased", we are all biased to things, are we  
3 not?

4 A Sure. I think so. We are all biased.

5 Q "Biased" means we are for it?

6 A We are biased in, some for or biased against  
7 it.

8 Q If we are prejudiced against something?

9 A I guess that would be your interpretation of  
10 the terms.

11 Q Okay.

12 A But "biased" to me could be for or against,  
13 it's just "set in the way."

14 Q You have a bias of the -- in favor of a death  
15 penalty over a life sentence in the penitentiary where  
16 you think the death penalty is the appropriate option  
17 over life is not as appealing to you?

18 MR. TOWNSEND: Your Honor, I  
19 believe the question he asked was so superfluous I'm not  
20 even sure -- I think he asked her if she had a bias  
21 toward the death penalty in a case that she felt was  
22 appropriate for the death penalty, is that what you  
23 asked?

24 MR. OLD: Your Honor --

25 MR. TOWNSEND: The

1 question --

2 MR. OLD: I object to him  
3 asking the Court what I asked, he knows it's not a legal  
4 objection to the question.

5 THE COURT: Do you understand  
6 the question as asked?

7 THE POTENTIAL JUROR: Repeat  
8 it.

9 MR. OLD: I can't repeat it.  
10 Can we have the Court Reporter read it back, Your Honor?

11 THE COURT: Yes, sir.

12  
13 (The question referred to was read back  
14 as follows: "You have a bias of the -- in favor of a  
15 death penalty over a life sentence in the penitentiary  
16 where you think the death penalty is the appropriate  
17 option over life is not as appealing to you?")

18  
19 THE POTENTIAL JUROR: If you  
20 are asking if I am to make the decision whether to give  
21 the death penalty or the life sentence in the case, the  
22 death penalty is more appealing to me, I would be biased  
23 to use that instead of the life sentence

24 MR. OLD: Do you think that  
25 statement that you just made, the opinion that you have

1 and the attitude that you just expressed --

2 THE POTENTIAL JUROR: I was  
3 just really repeating your question.

4 Q (BY MR. OLD) Was that your answer?

5 A No. I was repeating your question, you were  
6 asking me is that, you know --

7 Q When you stopped, I presume that was your  
8 answer?

9 A Yeah.

10 No.

11 You are asking me in a case where --  
12 where I am to decide to give the death penalty or a life  
13 sentence, you are asking or you are asking for an  
14 affirmation that I would be inclined to give the death  
15 penalty rather than a life sentence and I have to say  
16 that I could not, to be fair, I could not say that I  
17 would always favor one over the other. I think  
18 that's --

19 Q "Not always?"

20 A "Not always."

21 --I mean you -- I may have an opinion on  
22 paper but get, you know, if I am here being, you know,  
23 asked to really think about this and take a  
24 responsibility to make a decision that I'm thinking about  
25 it more so I have never been --

1 Q Would your attitudes toward the death penalty  
2 that we have been talking about, do you think that they  
3 could effect your deliberation in this matter in the  
4 answer of the questions that you are asked as to  
5 innocence or guilt and as to the Special Issues that you  
6 are asked to answer as to punishment?

7 A Will my attitude about the death penalty?

8 Q Yes. Effect the answers that you give.

9 First is innocence or guilt as to  
10 capital murder and as to two Special Issues we talked  
11 about.

12 A It wouldn't in the guilt or innocence but I  
13 certainly -- I think that -- I don't know. You are  
14 indirectly answering two questions when you answer the  
15 one.

16 Q When you answer --

17 A When you answer a Special Issue question you  
18 are answering another question also.

19 Q You are answering, too, what's going to happen?

20 A Pardon?

21 Q You are answering the result of your answer?

22 A Right.

23 Q What you are saying is when the question --

24 A So it is hard not to consider the ramifications  
25 of your answer.

1 Q Let me see if I understand you correctly; you  
2 are telling me in answering Special Issue #1 or Issue #2  
3 you are being asked a factual question or to find whether  
4 certain facts exist, now, I mean the jury does not give  
5 a death sentence, that is something that is done by the  
6 law but it is based on your answers and you know  
7 obviously what you are doing and whether it would have  
8 the same effect on you you would know what you are doing?

9 A Yes.

10 Q And you are saying that your opinions that you  
11 express in your questionnaire and your testimony are  
12 going to effect your answer to those questions in that  
13 you know the outcome of your answers?

14 A More so in Number Two than in Number One.

15 In Number One I would be judging the  
16 extent that they proved beyond a reasonable doubt of the  
17 probability, Number Two appears to be my opinion of --  
18 of evidence that -- in Number Two there appears, I feel,  
19 that there is evidence that there are -- that is more  
20 open to opinion than fact.

21 Q Okay. \_

22 A You know.

23 Q It's your opinion based on facts?

24 A Pardon?

25 Q It may be asking your opinion based upon an

1 opinion that you have here in -- what you have told me  
2 is that your attitude toward capital murder would effect  
3 your answers to those questions?

4 MR. TOWNSEND: I'm not  
5 sure --

6 MR. OLD: What you told me was  
7 that you were actually -- there were two things you  
8 considered, there would be two answers to Special Issue  
9 #1?

10 THE POTENTIAL JUROR: Yes.  
11 And Number Two.

12 Q (BY MR. OLD) And I mean the other answer, that  
13 is not directly asking for life or death?

14 A Right.

15 Q And the opinions that you have about capital  
16 punishment would effect how you answered those questions?

17 MR. TOWNSEND: Your Honor, I  
18 want to object. I think any juror's opinion is going to  
19 effect --

20 MR. OLD: I'm going to ask  
21 that the prosecutor make a specific objection as set out  
22 by the Rules, he's starting a jury argument.

23 THE COURT: Sustained. The  
24 objection is sustained.

25 The State is overruled.

1                   It's not easy, is it?

2                   THE POTENTIAL JUROR:   My  
3                   opinion about the death penalty effects my answer to  
4                   Special Issue questions?

5                   Yes.   To Number Two.

6                   THE COURT:   What about to  
7                   Number One?

8                   THE POTENTIAL JUROR:   Number  
9                   One -- Number One does not ask me to, Number Two, you  
10                  say, you know, "Is there a mitigating circumstance to  
11                  warrant a life imprisonment rather than a death  
12                  sentence", to me you are asking to make a decision on  
13                  which one you think is appropriate, deciding between the  
14                  type of punishment, and number one you are not deciding  
15                  on the type of punishment.

16                  THE COURT:   So are you telling  
17                  me your view on the death penalty would not effect your  
18                  answer to one but it is something you would take into  
19                  consideration in the answer to Number Two?

20                  THE POTENTIAL JUROR:   Yes.

21                  MR. OLD:   Going back to Number  
22                  One; the fact -- and you asked a very good question, you  
23                  asked if you did this all in one jury meeting.

24                  You obviously know what the question one  
25                  is and you know if you answer it a certain way you then

1 have to answer Special Issue #2?

2 THE POTENTIAL JUROR: Yes.

3 Q (BY MR. OLD) Is that going to take you back  
4 and have your opinions effect your answer to Special  
5 Issue #1?

6 A I don't think I understand the question.

7 In Number One I will consider where  
8 there is a reasonable doubt that there is -- beyond a  
9 reasonable doubt that this person would commit criminal  
10 acts of violence in the future. I would make a decision  
11 on that question then I will go to Number Two and  
12 consider the evidence in deciding which punishment is  
13 appropriate.

14 Q Would the fact that, you know, just as soon as  
15 you answer Number One "Yes" that you then answer Issue  
16 #2?

17 A Yes.

18 Q Okay. And your opinions that you have  
19 expressed about the death penalty, would those -- would  
20 that carry back -- would your opinions about the death  
21 penalty in any way influence your answer to Number One  
22 a little bit, a lot?

23 I mean it doesn't make any difference,  
24 just would it influence?

25 MR. TOWNSEND: Your Honor, I

1 want to object, he's badgering this witness, she has  
2 already answered that question for Mr. Old, she has  
3 already answered the question for the Court.

4 THE COURT: Sustained on  
5 Special Issue #1.

6 The question has been asked and  
7 answered.

8 It has been 37 minutes, I forgot to give  
9 you the 30 minute warning.

10 MR. OLD: May we approach the  
11 bench?

12 THE COURT: I think it would  
13 be easier for the juror to step out.

14 Ma'am, would you step out for a moment?

15  
16 (The following occurred outside the  
17 presence and hearing of the potential juror:)

18  
19 THE COURT: Let the record  
20 reflect that the juror is not present in the courtroom.

21 Mr. Old?

22 MR. OLD: Your Honor, at this  
23 time after the -- we are in a position to challenge this  
24 witness or see if the State agrees with us about the  
25 challenge.

1 THE COURT: Does the State  
2 agree?

3 MR. TOWNSEND: No, Your Honor.  
4 I don't know what the challenge is.

5 THE COURT: State your  
6 challenge.

7 MR. OLD: I understand what  
8 you want us to do is go ahead and make a formal  
9 challenge?

10 THE COURT: I'm sorry?

11 MR. OLD: You said you would  
12 give us a warning at a certain point?

13 THE COURT: I usually give you  
14 about 25 or 30 minutes warning so you know where you are,  
15 when the State is on the beginning portion of voir dire  
16 when I give the State a warning it's at 25 or 30 minutes,  
17 if the State and Defense wish to excuse a juror for any  
18 reason if you don't like the way they wear their ties or  
19 if you don't like mustaches for whatever reason you can  
20 agree to get rid of them.

21 Any warning I give for time is to help  
22 you all as far as challenge for cause. If you think  
23 somebody is totally and completely disqualified stop me  
24 at the point you disqualify them, if you are not certain  
25 I think we need to finish voir dire.

1 MR. OLD: I thought that when  
2 you gave me my warning --

3 THE COURT: "That I was giving  
4 a signal or message?"

5 No. I was not. The only thing the  
6 warning means is when I do it for the State, guys, if you  
7 all want to confer and excuse this juror let me know,  
8 when I give a warning to the Defense it's just so you  
9 will know about how much time you have used and where you  
10 are.

11 MR. TOWNSEND: I wasn't clear  
12 on that, either.

13 THE COURT: I'm sorry.

14 I don't care whether the person is  
15 qualified or disqualified in the first 25 or 30 minutes,  
16 either side that doesn't like her, if they want to confer  
17 with the other side and you two agree to excuse that  
18 juror for any reason whatever I will accept the  
19 agreement.

20 MR. TOWNSEND: If we are in  
21 the middle of this process and we feel that we have got  
22 a challenge for cause and it's just a lay-down do you  
23 want us to go ahead and ask to approach the bench at that  
24 time?

25 THE COURT: I think so or just

1 say "Judge, there's something that we need to take up out  
2 of the juror's presence", that's if you are really sure.

3 Right now in this case I do not believe  
4 she is disqualified.

5 MR. OLD: I was not -- when  
6 you gave me my warning I did not -- I thought you were  
7 trying to tell me something perhaps I didn't know.

8 THE COURT: I apologize. I'm  
9 sorry. That was no my intention. I didn't want you to  
10 get up to your 50 minutes and say "Judge, you never told  
11 me I had used so much time."

12 I was just trying to let you know where  
13 we stand.

14  
15 (Off the record discussion.)

16  
17 (The following occurred in the presence  
18 and hearing of the potential juror:)

19  
20 THE COURT: Okay. You may  
21 proceed.

22 MR. OLD: Ms. Henry, if  
23 selected as a juror in this case you will be asked to  
24 take an oath and this oath provides, requires you to  
25 affirm that "you and each of you", referring to the

1 entire panel.

2 THE POTENTIAL JUROR: Yes.

3 Q (BY MR. OLD) "Do solemnly swear in the case  
4 The State of Texas against the Defendant you will a true  
5 verdict render according to the law and the evidence so  
6 help you God."

7 And basically I mean you are telling the  
8 Court by your oath that you will render a true verdict  
9 according to the law and the evidence.

10 Okay. In our system the way we try a  
11 case, His Honor is the exclusive judge of the law of the  
12 case, at the conclusion of a trial or conclusion of  
13 evidence and before you are sent to the jury room to  
14 deliberate the Court will give you a written charge as  
15 to the law of the case, as to what law applies.

16 A Okay.

17 Q Now, your instruction, the instruction implies  
18 you will render a true verdict according to the law.

19 Now, as to the evidence that comes  
20 before you the Court may instruct you how you may use  
21 certain evidence, it may tell you that this evidence is  
22 not submitted to you for proof of a particular thing, it  
23 may limit its use but as to determining the credibility  
24 of the evidence and that is what is true and not true,  
25 the jury is the exclusive judge of the facts of this

1 case.

2 I mean when a word has a specific  
3 meaning, special legal meaning the Court may give you a  
4 definition of it and when he instructs you that a word  
5 means a particular thing then your duty as a juror is to  
6 use the Court's definition and not the ordinary  
7 definition or your definition.

8 A Yes.

9 Q There is a sheet before you, it starts "All  
10 persons are presumed to be innocent." (Indicating)

11 A Yes.

12 Q Okay. About the middle of that page, I believe  
13 it's the second full paragraph, "The prosecution has the  
14 burden", that is the legal definition of the word "beyond  
15 a reasonable doubt", I will give you a moment to read it.  
16 (Indicating)

17 A This one paragraph here? (Indicating)

18 Q Actually there to the end of the page.  
19 (Indicating)

20 A Okay.

21 Q Okay. That is the legal instruction that as  
22 your oath implied, you will render, you will take the law  
23 from the Court.

24 As to that particular definition can you  
25 accept that definition, the word "beyond a reasonable

1 doubt" or the words "beyond a reasonable doubt?"

2 A This comes from a law? Is this -- whose  
3 writing, whose words are these? (Indicating)

4 THE COURT: Those are  
5 instructions that are given in all criminal cases, those  
6 instructions have been mandated by the Court of Criminal  
7 Appeals for hundreds -- I won't say "hundreds", for "many  
8 years" we had no definition on "reasonable doubt", a few  
9 years ago the Court came out with a definition, that's  
10 what they say the definition is so that is the law in the  
11 State of Texas at this point.

12 THE POTENTIAL JUROR: Yes.  
13 I could accept it.

14 MR. OLD: Does your own  
15 definition of "beyond a reasonable doubt" conflict with  
16 the law?

17 THE POTENTIAL JUROR: No.

18 Q (BY MR. OLD) Okay. Let's assume that it did,  
19 okay, could you lay aside your own definition of a word  
20 and use the Court's definition of it in reaching your  
21 own --

22 A Are we talking about "reasonable doubt  
23 definition" or just any definition?

24 I mean we are talking about any  
25 definition, obviously I guess since I don't disagree with

1 this one I wouldn't have a problem using the Court's  
2 definition of a term that conflicted with my own.

3 I feel like I'm trying to give all the  
4 right answers but I am not.

5 Q I'm not trying to get you to give right or  
6 wrong answers, I want your --

7 A Well, I realize that.

8 Q -- your mental thoughts.

9 A That's how I feel. If I was on the -- if I  
10 was on the jury that, you know, that's the rules, to be  
11 fair and impartial, it doesn't matter what my definition  
12 of something is, if I have to interpret and use the law  
13 in this I have to use what the law says so --

14 Q Let me go to another possibility that you could  
15 be charged, I think Mr. Townsend mentioned it to you.

16 A Yes.

17 Q That would be in the event the party being  
18 tried has made a statement or confession.

19 A Yes.

20 Q If that was the result of custodial  
21 interrogation then the law says that the jury has to  
22 first find it has been voluntarily made.

23 And the Court will give you the  
24 requirements of "voluntary" which is a definition of  
25 "voluntary", it will tell you to the effect that in order

1 for that statement to have been voluntary that the  
2 Miranda Warnings must have been given at a particular  
3 time.

4 A Yes.

5 Q He will tell you that the statement -- if the  
6 statement was the subject of custodial interrogation or  
7 its functional equivalent, you know, that "A, B, C, and  
8 D" had to be done.

9 A Yes.

10 Do I need to define "custodial  
11 interrogation" before we go any further?

12 Q It's one of those words, I'm just saying --  
13 let's say the Court tells you, gives you a definition of  
14 that.

15 A And if we have to throw out the --

16 Q You get to the point that you have decided  
17 because -- what is your -- if I asked you what the word  
18 "voluntarily", it's ordinary meaning was, what would your  
19 answer be?

20 A If you are asking me the definition of  
21 "voluntary?"

22 Q Yes. What does "voluntary" mean to you?

23 A "Of my own choice, of my own choosing."

24 Q "Your own choice?"

25 Now, let's say that the legal definition

1 or the requirement of voluntariness is that the person  
2 who made the statement had to have been told by an  
3 official that he had the right to have an attorney  
4 present or he had the right to stop the interrogation at  
5 any time and he found out, he just flat wasn't told that  
6 but after having read the statement, which I mean it has  
7 been read to you, it's in evidence, you are deciding  
8 whether it's voluntary or not.

9 A Yes.

10 Q That in your mind beyond a reasonable doubt you  
11 believe that statement or confession to be true.

12 The Court then instructs you and says  
13 if you find that not to be a voluntary statement do not  
14 consider it as any evidence.

15 A Yes.

16 Q I hope my question is obvious, after having,  
17 believing beyond a reasonable doubt that something is  
18 true can you lay that aside and exclude it from the rest  
19 of the evidence and make your finding on whatever  
20 evidence there is exists for that?

21 A I don't mean to be argumentative but something  
22 wouldn't be produced, I mean, is it possible that we  
23 could have heard enough evidence to decide something  
24 beyond a reasonable doubt and then it be thrown out or  
25 is it not that, you know, you would make those decisions

1 before you went further with listening to certain  
2 evidence or viewing evidence?

3 Q When you say you would "make those decisions",  
4 are you referring to the jury?

5 A "The jury."

6 Because I mean if I read a  
7 statement --

8 Q I mean --

9 A -- a piece of paper, if I just read -- if I  
10 just read his statement I don't know what I have to judge  
11 beyond a reasonable doubt that is true just by simply  
12 reading that piece of paper.

13 Q You are convinced that is true?

14 A How would I be convinced that it was true just  
15 by reading it?

16 Q I don't know. I'm asking you to assume that  
17 you are but I mean you can be in that position -- the  
18 jury is the exclusive judge of the credibility of the  
19 evidence, there is nothing that says in the instructions  
20 if the witness is fidgety you are not to believe it, if  
21 he's argumentative you are not to believe it, I mean it  
22 is your subjective intent, your subjective, you know,  
23 mental deliberation that tells you how much to believe  
24 a witness, you may believe a witness on one issue, you  
25 may say he's lying out his teeth on another one.

1 A Yes. Yes.

2 Q And I mean there is no --

3 A But had to throw out evidence that I felt was  
4 true?

5 Q Yeah.

6 A And said that "You can't consider that?"

7 Q Yeah. "You can't consider it, forget about it,  
8 strike it from your mind and strike it from your  
9 deliberation."

10 A I would do it.

11 Q You would do it?

12 THE COURT: One minute.

13 MR. OLD: I'm asking you the  
14 question is "Yes" or "No", can you do that?

15 MR. TOWNSEND: Your Honor,  
16 he's badgering this juror.

17 THE COURT: Overruled.

18 MR. OLD: Your Honor, I'm  
19 going to object to his making his objection of  
20 "badgering", I do not think there is a legal objection  
21 to that.

22 THE COURT: Overruled.

23 THE POTENTIAL JUROR: I can  
24 do that. I can do that. I think I would be lying if I  
25 said it wouldn't be tough to -- to say, okay, you know,

1 but then -- and then say "No, we can't consider that, you  
2 know, I can't consider that", it would probably be a  
3 constant conscious effort to suppress what you have  
4 already seen or heard.

5 MR. OLD: Let me turn the  
6 question around on you; would the fact that when you are  
7 considering the issue of whether or not the statement is  
8 voluntary would the fact that you believed it to be true  
9 beyond a reasonable doubt influence your process in  
10 determining voluntary or involuntary?

11 THE POTENTIAL JUROR: If I  
12 were being asked to apply the law and judge whether it  
13 was voluntary and -- and admissable, is that what we are  
14 saying, we are judging it to be admissable so we would  
15 have to I guess answer certain questions about --

16 Q (BY MR. OLD) Let me --

17 A The way we --

18 Q I think we are on the same frequency;  
19 admissability is principally the function of the Court.  
20 Now, what you have in this case is a statement is  
21 admissable if it's voluntarily made as the law defines  
22 "voluntary."

23 As we talked about earlier, the jury is  
24 the fact finders, voluntariness is a fact issue, it's not  
25 a -- in the case I'm talking about a legal issue that His

1 Honor would be responsible for.

2 A Right.

3 Q Okay. Now, I mean it's a fact issue and it's  
4 actually the juror -- the jury's determination, first,  
5 if it was voluntary and then secondly whether it's true  
6 or not, whether it would be considered as evidence, I  
7 mean -- I mean the voluntariness is determined by facts  
8 which you have to decide and then the weight to be given  
9 it as evidence, if any, is factually determined by the  
10 jury so I mean --

11 A Those are two separate issues.

12 Q When you asked if is it admissable, I mean the  
13 ultimate issue on it belongs to the juror as to voluntary  
14 and the Court as to the other issues, what weight you  
15 should give it, do you still think you could go through  
16 both thought processes in this case where you believe the  
17 document to be true and correct without --

18 A Yes.

19 And I think it goes back to our  
20 discussion on these Special Issue questions, there are  
21 two different issues that you are asking me there.

22 Could I -- you are asking me could I  
23 hear evidence and determine evidence or I guess the  
24 statement to be voluntary based on the evidence  
25 presented, not based on what it said?

1 Q That's correct.

2 A And I believe I could.

3 Q When you say "based on what it said", that's  
4 where you believe it's true?

5 A I believe that I could just the statement  
6 voluntary or not based on evidence presented and not  
7 based on what the statement says and my feelings about  
8 what it says.

9 Q I notice that you have a degree from the  
10 University of Texas?

11 A Yes.

12 Q And this is what, a psychology degree?

13 A It is.

14 THE COURT: Time has expired,  
15 Mr. Old.

16 Do you have some particular area that  
17 you need to go into with this juror?

18 MR. OLD: I have several  
19 remaining, I would request additional time.

20 THE COURT: Ma'am, you need  
21 to step out for a moment. I need to have a conference  
22 with the lawyers.

23  
24 (The following occurred outside the  
25 presence and hearing of the potential juror:)

1

THE COURT: For the record,

2

you will need to tell me what area you need to cover and

3

how much time you need for each.

4

MR. OLD: Your Honor, I need

5

to finish covering really some background material in her

6

questionnaire, I am groping about what I have asked her

7

about and what I have not asked her about, I need to go

8

over the Witness List with her and I probably have one

9

more question as to death penalty.

10

THE COURT: How much

11

additional time are you asking for?

12

Do you want to ask an additional

13

question on death penalty, you want her to read the

14

Witness List and you said "some background?"

15

MR. OLD: Her background.

16

Right now my next question is her

17

knowledge as to her degreed area and if someone else in

18

that area testified the way it would effect the evidence.

19

THE COURT: How much time are

20

you requesting?

21

MR. OLD: The witness answers

22

questions and gives interesting answers.

23

THE COURT: She does that.

24

MR. OLD: I would hope 15

25

minutes.

1 THE COURT: Mr. Townsend?

2 MR. TOWNSEND: First, Your

3 Honor, I object to him going back into the death penalty  
4 with her, he had plenty of opportunity to go into the  
5 death penalty, he spent considerable time on that  
6 already. Now he's requesting additional time to go into  
7 the death penalty. I do object to that.

8 THE COURT: What specific  
9 question do you have on death penalty or specific area  
10 of inquiry?

11 MR. OLD: Your Honor, back to  
12 what she talked about as to the effect of her opinion on  
13 the death penalty as to the -- as to Issue #1 on  
14 exhibit --

15 THE COURT: I think that has  
16 been thoroughly covered.

17 First, neither side has the burden of  
18 proof on Number Two and it's just an absolute out if a  
19 juror wants it and I think an opinion as to whether life  
20 is more appropriate or death is more appropriate on  
21 answering two, I don't think that you can say that it can  
22 or can't effect your answer because Number Two is out  
23 there with no burden, it's just an escape valve for the  
24 juror.

25 I believe that area has been covered and

1 with the objection made by the State I would not allow  
2 you to go back into it.

3 MR. OLD: We would like to  
4 make a bill on it.

5 THE COURT: Bills will be made  
6 at the end of voir dire.

7 Bring her back.

8 MR. TOWNSEND: Your Honor, I  
9 have -- I have a further objection; I think if I  
10 understand what he was saying he was wanting to go into  
11 areas of her degrees in psychology or something like that  
12 and whether she would consider that as evidence, she  
13 could consider psychological testimony and that sort of  
14 thing as evidence.

15 He's already gone into the area, you  
16 know, Special Issue #1, Special Issue #2, will you  
17 consider these type things of evidence, will you give  
18 fair consideration to this, will you give fair  
19 consideration to that?

20 I don't see any reason to go back and  
21 re-plow that ground again.

22 THE COURT: I don't think he  
23 has gone into what her particular degree or education  
24 would do as far as her giving credibility to other  
25 witnesses.

1

And if I understand you, Mr. Old, that's

2

what you want to get into?

3

MR. OLD: Yes, Your Honor.

4

THE COURT: That objection is

5

overruled and I will give you 15 minutes.

6

MR. OLD: Thank you.

7

THE COURT: I also would like

8

to explain a little more to the juror how she would come

9

about making the decision on voluntary statement since

10

that seems to be paramount in your mind, just the

11

semantics -- not "semantics", actually the way it works

12

and what I propose to do is tell her if there is a

13

statement made that's in a trial she will be instructed

14

-- and they are in issue -- that she will be instructed

15

to disregard until, number one; she finds it true beyond

16

a reasonable doubt and, number two; she finds it to be

17

voluntary beyond a reasonable doubt and that is not a

18

separate issue, it's just something that will be in the

19

charge.

20

Does either side have a problem with me

21

explaining that procedure to her?

22

MR. OLD: No, Your Honor.

23

MR. TOWNSEND: No, Your Honor.

24

THE COURT: She just really

25

is caught up in how all this works, I think that's

1 keeping her from concentrating on it.

2  
3 (Off the record discussion.)

4  
5 THE COURT: Bring in Ms.  
6 Henry.

7 I don't think we are going to get to  
8 both of the other two today, which one do you all want  
9 and, well, I guess we need to go in order.

10 Do you want to let the policeman -- do  
11 you all want to talk to the policeman?

12 MR. TOWNSEND: Mr. Alexander,  
13 we are apparently not going to go to him.

14 THE COURT: Do you want to let  
15 him go or do you want to talk to him?

16 MR. TOWNSEND: I want to talk  
17 to him at some point after Ms. Henry.

18 THE COURT: You can tell Mr.  
19 Alexander, tell him we are not going to get to him today  
20 and see if he can be here in the morning at 9:30, I'm  
21 sure he can, he's a City policeman.

22 THE BAILIFF: Tomorrow at  
23 9:30?

24 THE COURT: He's not working  
25 nights, you can tell him he's free to go and be back at

1 9:30 in the morning and bring Ms. Henry back in.

2 I will not take my explanation out of  
3 your 15 minutes, Mr. Old.

4  
5 (The following occurred in the presence  
6 and hearing of the potential juror:)

7  
8 THE COURT: You may be seated,  
9 ma'am.

10 There is something I want to explain to  
11 you and Mr. Old has a couple more questions for you but  
12 you seem to be concerned over how this statement issue  
13 might come about in a trial if it does.

14 Now, first I want you to understand that  
15 when we are discussing principles of law we are not  
16 particularly talking about this case, we are talking  
17 about the trial of a murder case or a capital murder case  
18 or whatever example we are giving.

19 THE POTENTIAL JUROR: Yes.

20 THE COURT: If a statement is  
21 made by the person charged during the trial that  
22 statement will be offered, the State has to go through  
23 proving certain things and then if I find that it's  
24 admissable then I admit it then you may hear other  
25 evidence during the trial that may create an issue of

1 fact as to whether or not it was voluntary.

2 To be voluntary, like Mr. Old told you,  
3 you have to give Miranda Warnings, those are the rights,  
4 you have the right to an attorney, you have a right to  
5 have an attorney present at all questions, you have a  
6 right to terminate the questioning, if you can't afford  
7 a lawyer we'll provide one.

8 THE POTENTIAL JUROR: Yes.

9 THE COURT: So, for instance,  
10 if a statement was given by a person yet that person was  
11 never told he had a right to a lawyer, even though that  
12 statement is absolutely true, you may find it to be  
13 absolutely true.

14 THE POTENTIAL JUROR: Yes.

15 THE COURT: It's not something  
16 you can consider and should not have been admitted  
17 because it was not voluntary.

18 "Voluntary" means no coercion, no  
19 promises, no threats and all the proper warnings are  
20 given.

21 So what you will do, you will have the  
22 evidence before you and we have to assume that it has  
23 been admitted and then let's assume that some issue comes  
24 up over the fact as to whether certain warnings were  
25 given or maybe there's some testimony about a guy was

1 kept in a room for 48 hours without sleep and finally  
2 wrote a statement so he could go to his cell. Let's  
3 assume you heard some evidence such as that. That could  
4 cause, as we say, raise a fact issue as to whether it's  
5 voluntary.

6 In the Court's charge you will -- "the  
7 Court's charge" is a document is anywhere from eight to  
8 15 or 20 pages long to define all the legal terms that  
9 differ from your normal usage, it will define the  
10 elements of the offense, it will kind of be your  
11 guideline, one of the things, if a statement is in  
12 evidence and there's some question as to whether it's  
13 voluntary one of the instructions will be you cannot base  
14 your verdict on the statement unless, once it becomes  
15 -- unless you believe beyond a reasonable doubt that the  
16 statement is true and you believe beyond a reasonable  
17 doubt that it's voluntary you don't stop and analyze the  
18 evidence every time it's put in, you listen to everything  
19 that happens in a trial, you can go back to deliberate,  
20 you refer to the Court's charge.

21 THE POTENTIAL JUROR: Yes.

22 THE COURT: And if there is  
23 any evidence like that and there's a question as to  
24 whether it's voluntary then you are instructed, number  
25 one, you can't consider it unless two things occur, what

1 has to be believed by you has to be voluntary.

2 THE POTENTIAL JUROR: Yes.

3 THE COURT: Is that -- does  
4 that clear up any of your confusion as to how you get to  
5 that issue?

6 THE POTENTIAL JUROR: I think  
7 so. And it's a decision that I could make as an  
8 individual?

9 THE COURT: Well, it takes all  
10 of you to decide.

11 THE POTENTIAL JUROR: Oh,  
12 okay.

13 THE COURT: Again, the verdict  
14 has to be unanimous and if some of you believe it or some  
15 of you don't you are going to have to decide whether to  
16 disregard it or not.

17 THE POTENTIAL JUROR: Yes.

18 THE COURT: All right. Now,  
19 there's a couple of other areas we are going to go into  
20 that doesn't have anything to do with this so do you have  
21 anymore questions about how we get to that issue or what  
22 the effect of that type of an issue is?

23 THE POTENTIAL JUROR: I don't  
24 think so.

25 But to clarify, are we talking about

1 -- I'm not trying to make an issue of this, either.

2 THE COURT: I understand.

3 THE POTENTIAL JUROR: Are we  
4 talking about the written statement, we are talking about  
5 a written statement or recorded statement that was made  
6 when a person --

7 THE COURT: For purposes of  
8 his questions, yes, we are assuming -- let's use the word  
9 "confession", we are assuming that a confession was  
10 given.

11 THE POTENTIAL JUROR: Yes.

12 THE COURT: And then the jury  
13 finds that -- let's make it real simple, let's say the  
14 Sheriff gets up and testifies, "You know, I forgot to  
15 tell him he had a right to a lawyer before he gave me  
16 that confession."

17 THE POTENTIAL JUROR: Yes,  
18 sir.

19 THE COURT: And you have got  
20 a confession that you believe and then you have the  
21 Sheriff saying, you know, "I didn't give him the  
22 warnings", so it's absolutely not voluntary under the  
23 law.

24 THE POTENTIAL JUROR: Yes.

25 THE COURT: And you would have

1 to set it aside, not consider it.

2 Could you do it?

3 THE POTENTIAL JUROR: I could  
4 do it.

5 THE COURT: Do you have  
6 anymore questions about that area before we move on?

7 THE POTENTIAL JUROR: No.

8 THE COURT: Okay. Mr. Old.

9 MR. OLD: I was asking you  
10 about your degree from the University of Texas, it is  
11 possible in a trial of this kind or any criminal trial  
12 that as to some issues and in this case perhaps issues  
13 Number One and Number Two that you have been over that,  
14 you might hear some psychological testimony from a  
15 psychiatrist or a psychologist.

16 THE POTENTIAL JUROR: Yes.

17 Q (BY MR. OLD, CONTINUING VOIR DIRE EXAMINATION)

18 That is a field that you have expert  
19 training in?

20 A No.

21 Q Do you have a degree?

22 A Yeah.

23 Q Okay. Do you specialize in any particular  
24 field?

25 A No. It's a Bachelor of Arts in Psychology.

1 Q But you will agree with me that you know more  
2 about psychology than somebody that does not have a  
3 degree?

4 A I don't know.

5 Q You studied?

6 A It was 1985 when I graduated.

7 Q Have you ever worked in that field?

8 A No.

9 Q You work out at the college?

10 A I work out at the college and currently I am  
11 director of a truck driving program so it's very business  
12 administrative type.

13 Q Did you use directly or indirectly your  
14 training in psychology doing your job?

15 That's probably not a fair question, we  
16 all practice a little psychology.

17 A You know, that degree doesn't give me any --  
18 any license to exercise any kind of psychology work. I  
19 am, you know, not a licensed counselor.

20 I guess I feel the word "training" is  
21 not appropriate, I have the education in psychology, a  
22 degree.

23 Q Let me --

24 A And, yes, I have probably, you know, I have  
25 been exposed to more than the average person.

1 Q And "expert" is someone who possesses special  
2 knowledge in a field that we consider to be a specialized  
3 area?

4 A Yes. And the experience.

5 Q I know that you are not licensed to practice,  
6 it's the fact that you had those courses and training and  
7 there are things that you know about psychology that  
8 people who don't have that degree --

9 A Yes.

10 Q -- don't know?

11 A Yes.

12 Q So you --

13 A But I won't consider myself an expert anyway.

14 Q You are more of an expert than somebody that  
15 hadn't had it. I'm not saying --

16 A Might be more knowledge but I am --

17 Q Here I am trying to make you an expert, you  
18 don't want to be one?

19 A I know.

20 Q And I'm not implying that you have a license  
21 to practice or that you practiced, I am simply saying  
22 that you possess special knowledge?

23 A Yes. And I just don't want -- simply don't  
24 want to over-represent myself.

25 Q I'm not trying to get you to.

1                   Would your knowledge of the field and  
2 the effect of your degree, would you be measuring  
3 testimony from a psychiatrist based on your knowledge or  
4 would you -- I mean if he said that he administered such  
5 and such tests and based on such and such a theory, you  
6 know, this is his opinion of whatever, if you disagreed  
7 with him about it it's a field that you know about you  
8 have some expertise in, you have the knowledge of the  
9 tests, you remember studying the tests, can you  
10 categorically reject his testimony because his theory of  
11 psychology differed from yours?

12       A           As with any evidence that was presented, any  
13 opinion, I would have to consider their professional  
14 judgment in that and specifically in the area of  
15 psychology I have, I -- like I said, I graduated 10 years  
16 ago. I have not been in the field, I probably can  
17 remember maybe two tests that may be used and I certainly  
18 don't know how to interpret them if, you know, no, I  
19 could not, but I feel that there is a broader implication  
20 here rather than just my college degree and, you know,  
21 he could be talking about very little of what -- I don't  
22 know, but he could be talking about, you know, forensics  
23 or something, I certainly don't know anything about that.

24                   I certainly would have to take into  
25 account what they are saying, what their proof is, what

1       their --

2       Q           Let me see if I can narrow you down with some  
3       of my questions; you would not -- you would consider a  
4       witness such as a psychiatrist, you would weigh his  
5       credibility as you would any other type of witness?

6       A           Yes.

7       Q           You would not -- I'm not saying that you would  
8       have to agree with him opinion or you would have to  
9       accept his opinion, I'm saying that you would not  
10      automatically reject his opinion because, "Well, I know  
11      as much about that as he does and he's wrong", you won't  
12      substitute your knowledge of psychology for his?

13      A           No.

14      Q           Do you have any prejudice against opinions of  
15      psychiatrists? That is do you believe that they can  
16      express opinions that would go to the ultimate issue of  
17      Issue #1 and Issue #2, the possibility of future  
18      violence?

19      A           Pardon? We are talking about Special Issues?

20      Q           Yes. A possibility of future violence.

21                   I'm not asking you to predispose the  
22      answer, in psychology testimony something, an opinion  
23      expressed, is that something that you would not reject  
24      as evidence?

25      A           Yes. I would not reject it. That's right.

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I would consider psychological testimony

as evidence.

Q Would the same be true as to Issue #2?

A Yes.

Q There is a list in front of you that is at the top it has "Witness List", it's about a three page document.

A (Indicating)

Q Yes.

A Okay.

Q Will you go over that and what I want you to identify, to do is to identify for me any name that you know and are familiar with and especially if you just know the person but if you have just heard of them I would like to know it.

A There is some handwritten names. (Indicating)

Q Yes. Those are to be considered, too.

A I don't know anyone.

Q You do not know anyone? Not any name that jogs your memory?

A Like the only thing would be maybe "Billy Dodd", did he run for some -- maybe County Commissioner or something?

I saw a sign, I don't know why but I don't know.

1 Q Whether he ran for County Commissioner or not?

2 A I live over on the Harts Bluff Road, there's  
3 a lot of signs out.

4 Q You live on Harts Bluff?

5 A I have no idea who they are.

6 Q That's fine.

7 You checked that you have not heard  
8 anything about the facts giving rise to the case.

9 That was a couple of weeks ago, have you  
10 heard anything since?

11 A I heard that the man lived in Cason, he was a  
12 70 year old man that lived in Cason.

13 Q You work at the college, the college is close  
14 to Cason?

15 A Yes.

16 Q Did you come by this knowledge by newspaper,  
17 hearsay, what someone else said?

18 A Yes. It -- it may have been here while we were  
19 waiting to go in but I was -- I was out -- I left the  
20 college for about six months and I left in June, early  
21 June of last year and returned in November and I don't  
22 take the paper.

23 Q Let me -- anything that you have heard and you  
24 answered that you had not heard anything at the time of  
25 the questionnaire?

1 A Yes, sir.

2 Q Anything that you have heard since or even if

3 you now recall that you did hear something?

4 A Yes.

5 Q Have you formed any opinion as to innocence or

6 guilt?

7 A No.

8 Q Have you formed any opinion as to the existence

9 of a particular fact --

10 A No.

11 Q -- about this particular offense?

12 A No.

13 Q I'm sure you notice on that list there are

14 people who are listed as law enforcement officers, for

15 instance, Billy Dodd, Game Warden, Ricky Blackburn, the

16 Sheriff of Morris County, Texas?

17 A Okay.

18 Q Can you consider, I mean do you consider peace

19 officers to be generally credible people?

20 A Generally I suppose.

21 Q Over a non-peace officer? Does the fact that

22 someone is a law enforcement officer give them a head

23 start in being credible with you?

24 A No.

25 Q I mean that is a fact, you would consider it,

1 you would view their credibility as any other witness?

2 A Pardon? "I would view their credibility?"

3 Q Yes.

4 A What? I'm sorry. Repeat the question.

5 Q So far you must be required to start all  
6 witnesses even.

7 A Yes.

8 Q Now, I mean when, well, an imaginary race  
9 between witnesses, you have a peace officer and just a  
10 plain ordinary person, at that point does the peace  
11 officer have more credibility with you before you hear  
12 his testimony?

13 A No.

14 Q Your complaints about the criminal justice  
15 system are "Too many appeals allowed and too many chances  
16 for repeat offenders."

17 THE COURT: One minute.

18 MR. OLD: Anything in that  
19 opinion that you think would go to the detriment of the  
20 defendant in the trial of a case?

21 THE POTENTIAL JUROR: If it  
22 was their third offense or fourth offense, fifth offense.

23 Q (BY MR. OLD) You mean by an offense -- what  
24 is an "offense", are you talking about a prior  
25 conviction?

1 A Prior convictions.

2 Q Would the type of crime that they had committed

3 go to the weight, how you felt about supposedly a second

4 chance?

5 A No.

6 Q It wouldn't make any difference what they are

7 convicted for?

8 A No.

9 Q It wouldn't have to be a serious crime?

10 A Wouldn't have to be a serious crime. No.

11 Q Do you know the difference between "a

12 misdemeanor" and a "felony?"

13 A No.

14 Q You know there is a difference?

15 A Yes.

16 Q Misdemeanor basically is punished by time in

17 jail up to one year and a felony is punishable by more

18 time in the State penitentiary.

19 A Okay.

20 Q Would that make any difference to you?

21 A Whether it was a felony or misdemeanor crime?

22 Q Yes.

23 A No.

24 Q Would it make any difference whether or not

25 they were actually convicted of it?

1 A Yes.

2 Q Okay. I mean, let's say you heard somebody

3 committed a prior act which is in fact is a crime but was

4 not convicted, not charged with it?

5 A I can't use that against them.

6 Q You can't?

7 It would only be -- would perhaps the

8 age and circumstances of the person when the offense

9 occurred have something to do with the way that you would

10 give it?

11 A On repeat offenses?

12 Q Is that a question or an answer?

13 A It's a question. Are we talking, still talking

14 about repeat offenses?

15 Q Yes. Let's say you are trying a man and you

16 become aware that perhaps as a juvenile --

17 A Yes.

18 Q -- he had committed -- a juvenile cannot commit

19 a crime in law, I mean they are not punished in most

20 cases, there are exceptions to that.

21 A Yes.

22 Q But would a juvenile incident, would you

23 consider that, you know, in repeat offenses, repeat

24 offenses?

25 A Yes.

1 MR. OLD: Your Honor, other  
2 than the matter that has been indicated to the Court that  
3 we wanted to make a bill on we have nothing else at this  
4 time.

5 THE COURT: Ma'am, if you will  
6 step down I will have some further instructions for you  
7 in a few moments.

8 You will be out of here shortly.

9 THE POTENTIAL JUROR: Okay.

10 THE BAILIFF: Would you like  
11 to take your purse with you?

12 THE POTENTIAL JUROR: Okay.

13  
14 (The following occurred outside the  
15 presence and hearing of the potential juror:)

16  
17 THE COURT: Let the record  
18 reflect the juror is not present.

19 Mr. Old, you said you wanted to make a  
20 bill on the area I would not let you go back into, I  
21 would not let you go back into her view on death as it  
22 might effect her answer.

23 Can you give me any specific question  
24 you wish to ask her at this time that you have not  
25 covered?

1 I'm really not sure how you are going  
2 to make a bill without asking her the question so if you  
3 can demonstrate to me questions that you have not asked  
4 her in that area that you think are relevant I may  
5 reconsider.

6 MR. OLD: What I want to ask  
7 her is it goes back to her questionnaire statement which  
8 she has been questioned about to some extent which  
9 indicates that.

10 THE COURT: Where are we  
11 again?

12 MR. OLD: The questionnaire  
13 on "Please explain your answer" after "death penalty."

14 THE COURT: Okay. I am here.

15 MR. OLD: "If a person is to  
16 be imprisoned for the remainder of his life he should be  
17 put to death."

18 And then she, in brackets, put "That is  
19 not really the point. I feel a person should pay for a  
20 life with a life."

21 And then after the selection of --  
22 circled the bottom statement where she answered, no, that  
23 she did not agree to a life sentence rather than a death  
24 penalty would be appropriate under certain circumstances.

25 Those are, I mean they are not hedging

1 answers, she says she could not give a life sentence, she  
2 told me in her testimony that they would influence -- one  
3 question she told me they would influence her answer to  
4 both Special Issue #1 and Issue #2.

5 THE COURT: She never said  
6 that, Mr. Old.

7 MR. OLD: I disagree with you.

8 THE COURT: Let's go back and  
9 I believe she said it -- let's go back -- Lloyd, we are  
10 off the record.

11  
12 (Off the record discussion.)

13  
14 (Recess.)

15  
16 (The following transpired in the  
17 presence and hearing of the potential juror:)

18  
19 THE COURT: Ma'am, let me just  
20 for your own information, other jurors that we have  
21 talked to have not been as inquisitive as you and your  
22 questions have caused the lawyers to take up some of the  
23 time I normally give them to ask questions so Mr. Old has  
24 requested some additional time to go into something that  
25 I think was previously covered and I'm going to give him

1 that time.

2 But normally we don't bring jurors back  
3 and forth like this and I just wanted to explain that to  
4 you and tell you that I'm sorry, that I'm sorry we're  
5 taking so much time with you but we want all jurors to  
6 have all their questions fully answered and I'm not  
7 criticizing you for asking, I wish more jurors would ask  
8 because if you have something on your mind that you don't  
9 get explained then it's still going to be a question.

10 THE POTENTIAL JUROR: Yes.

11 THE COURT: So I am not  
12 criticizing you, I'm just trying to explain why it's  
13 taken so long but there's still one area he needs to  
14 cover.

15 THE POTENTIAL JUROR: Okay.

16 THE COURT: And if you ask  
17 anymore questions, that's fine, I am not telling you not  
18 to ask a question if there is anything.

19 THE POTENTIAL JUROR: That  
20 would be difficult.

21 THE COURT: If there's  
22 anything you don't understand, we don't understand we  
23 still want you to tell us and it is our job to explain  
24 it and if you walk out without knowing we are not doing  
25 our job.

1 THE POTENTIAL JUROR: Okay.

2 THE COURT: Mr. Old.

3 MR. OLD: Ms. Henry, first you  
4 have been an excellent prospective juror in the fact that  
5 you asked questions and have answered questions and are  
6 obviously working at answering these questions correctly.

7 What I would like to ask you before we  
8 talk about -- when I say "we", Mr. Townsend, the Court  
9 and myself, murder and capital murder; "murder" by  
10 definition is intentionally and knowingly killing  
11 someone, the range of punishment for murder is from five  
12 years probated --

13 THE POTENTIAL JUROR: Yes.

14 Q (BY MR. OLD, CONTINUING VOIR DIRE EXAMINATION)  
15 -- to life.

16 Again a murder is or can be a lesser  
17 included offense that is a -- you may be asked in the  
18 charge "Is the person on trial guilty of capital murder,  
19 if you do not find so beyond a reasonable doubt you shall  
20 find him not guilty of capital murder", then it may come  
21 back and say, -- "A person commits murder when he  
22 intentionally or knowingly takes the life of another" and  
23 you will be asked if he is guilty of that or not guilty.

24 A Yes.

25 Q The lesser included offense.

1                   In your questionnaire and in your  
2 testimony you indicated your feelings about capital  
3 punishment and in doing so indicated your feeling about  
4 life sentences and you have been told by His Honor that  
5 you shall consider life as meaning life?

6           A           Yes.

7           Q           Now, in deliberating as to punishment for  
8 murder and not capital murder the lesser included offense  
9 of murder, are your opinions on capital murder, capital  
10 punishment and your opinions as to life sentences, are  
11 those things that you are going to consider in reaching  
12 punishment on a non-capital murder?

13          A           On a non-capital murder the death penalty is  
14 not an option --

15          Q           That's correct.

16          A           -- for punishment?

17          Q           Yes. Okay. You may --

18          A           So my feelings about that are voided by the  
19 fact that there is not that option to exercise.

20          Q           Let me -- I may not be communicating.

21                        --In your questionnaire, and I'm quoting  
22 from it.

23          A           Yes.

24          Q           "The remainder of his life, if a person is to  
25 be in prison for the remainder of his life he should be

1 put to death?"

2 A Yes.

3 Q And then you made the statement at the bottom  
4 of the page that you agree that a life sentence rather  
5 than the death penalty would be appropriate under the  
6 proper circumstances.

7 Those two statements together tell me  
8 that you have a prejudice against life being used --

9 A Yes.

10 Q -- as a punishment?

11 A Yes. Yes.

12 Q That life equals life then that the more  
13 appropriate punishment is death?

14 A Yes.

15 Q Would those opinions effect you in deliberating  
16 in that range of punishment between five years probated  
17 and life?

18 I'm not saying that it would make you  
19 go either way but it would make you favor the lower end  
20 or -- I'm not asking you to favor either end.

21 A Yeah. I'm not sure what my exact response  
22 would be but, yeah, I think it causes some concern with  
23 me.

24 Q Just going -- your opinion about life --

25 A Right.

1 Q -- is going to effect --

2 A How --

3 Q -- your deliberating on sentencing in a regular  
4 or a non-capital murder case?

5 A Yes.

6 MR. OLD: We would pass the  
7 witness.

8 THE COURT: Mr. Townsend, do  
9 you have any questions?

10 MR. TOWNSEND: Just briefly,  
11 Your Honor.

12  
13 REDIRECT VOIR DIRE EXAMINATION

14 BY MR. TOWNSEND

15  
16 Q Ms. Henry, you stated when I was talking to  
17 you, I believe you stated that you in deciding punishment  
18 on a murder case knowing that the range of punishment was  
19 between five years probation and 99 years to life, that  
20 you would base your punishment decision on the different  
21 facts and circumstances and events of that particular  
22 case, is that correct?

23 A I believe I said that. Yes.

24 Q Okay. Is that still the way you feel, that you  
25 would base your decision as to the proper punishment on

1 the -- on that case and the evidence in that case and not  
2 on some -- not on anything else, your decision is going  
3 to be based on the evidence in that case and that case  
4 alone?

5 A Yes.

6 MR. TOWNSEND: No further  
7 questions, Your Honor.

8 THE COURT: Ma'am, you also  
9 said earlier that if you heard a murder case and again  
10 you realize when we are talking we are not talking about  
11 Mr. Wardlow, we are talking about a murder case or a  
12 capital murder case?

13 THE POTENTIAL JUROR: Yes.

14 THE COURT: You told us  
15 earlier if I remember correct that if you heard a murder  
16 case and you felt like based on the evidence that the  
17 appropriate punishment would be probation you could give  
18 probation and you felt like the appropriate punishment  
19 would be life you could give life?

20 THE POTENTIAL JUROR: Yes.

21 THE COURT: In other words,  
22 you told us you could consider the full range and go  
23 either the high or the low?

24 THE POTENTIAL JUROR: Yes.

25 THE COURT: Is that still your

1 position?

2 THE POTENTIAL JUROR: Yes.

3 THE COURT: Thank you, ma'am.

4 You may step down.

5 Hopefully this will be the last time but  
6 I will make no promises.

7 THE POTENTIAL JUROR: So I  
8 still need to hang around?

9 THE COURT: I need to talk to  
10 the lawyers for a minute then I need to send the Sheriff  
11 back to give you a couple of instructions, then you will  
12 be free to go.

13  
14 (The following occurred outside the  
15 presence and hearing of the potential juror:)

16  
17 THE COURT: Does the State  
18 have any challenges?

19 MR. TOWNSEND: None, Your  
20 Honor.

21 THE COURT: The Defense?

22 MR. OLD: Yes, Your Honor.

23 The Defense would challenge the juror Lori Henry, first  
24 that in her voir dire examination she made the statement  
25 that her opinions on capital punishment and those

1 opinions that she affirmed from her questionnaire that  
2 she would -- that she did have a bias in favor of the  
3 death penalty as a punishment for crime as opposed to  
4 life and that in answering the Special Issue #1 and Issue  
5 #2 that she would -- that the opinions that she held on  
6 capital punishment would effect her answers to those two  
7 issues and more to Issue #1, more to Issue #2 than Number  
8 One but she did indicate it would effect her answer to  
9 Number One.

10 And once she has testified to that she  
11 is disqualified and should not rehabilitated.

12 I think there was testimony that  
13 amounted to rehabilitation at a later point.

14 Secondly as to those same opinions as  
15 to her belief about capital punishment perhaps better  
16 stated that her opinion, if a person is to be imprisoned  
17 for the remainder of his life he should be put to death.

18 That she indicates directly that in the  
19 deliberating in a non-capital murder case and in  
20 assessing punishment that that opinion would effect her  
21 deliberating and her sentencing.

22 THE COURT: In a non-capital?

23 MR. OLD: And in a non-capital  
24 and that is to say that she cannot consider the full  
25 range of punishment without that bias effecting her, bias

1 or prejudice effecting her deliberations.

2 THE COURT: Do you have any  
3 other challenges?

4 MR. OLD: That's all, Your  
5 Honor.

6 THE COURT: Mr. Townsend, do  
7 you wish to respond?

8 MR. TOWNSEND: As to this  
9 first challenge, Your Honor, I don't believe the full  
10 record indicates that she has a bias toward the death  
11 penalty, as to his second challenge, I don't believe her  
12 testimony was that she would use any such bias or any  
13 such previous position in answering Special Issue #1.

14 I think if she has expressed an opinion  
15 and uses that to Special Issue #2 that is precisely what  
16 she is supposed to do.

17 As far as Mr. Old's allegation, and I'm  
18 not who he thinks rehabilitated her testimony since I was  
19 not -- did not question her on that area of the law. I  
20 don't believe that challenge.

21 THE COURT: I think he was  
22 referring to the Court's rehabilitation.

23 MR. TOWNSEND: As to  
24 "Number 3", I think she clearly testified both in my  
25 questioning and Mr. Old's questioning and the Court's

1 questioning that she could and would consider the full  
2 range of punishment in a non-capital case.

3 THE COURT: I'm going to  
4 overrule all challenges on Ms. Henry and I do find her  
5 to be qualified.

6 We are in recess until 9:30 tomorrow  
7 morning.

8 Leo, tell her she is free to go, she is  
9 still a prospective juror, we will notify her toward the  
10 end of next week.

11  
12 (Record closed for October 26th, 1994.)

13  
14 (Whereupon Court was recessed until 9:30  
15 a.m., October 27th, 1994.)

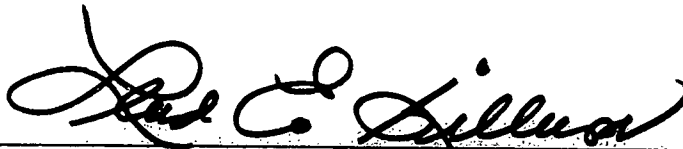
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1 STATE OF TEXAS §  
2 COUNTY OF TITUS §

3  
4 I, Lloyd E. Billups, CSR #149 and  
5 Official Court Reporter in and for the 76th Judicial  
6 District, State of Texas, do hereby certify that the  
7 above and foregoing contains a true and correct  
8 transcription of the proceedings in the above-styled and  
9 numbered cause, all of which occurred in open court or  
10 in chambers on October 26, 1994 and were reported by me.

11 I further certify that this  
12 transcription of the record of the proceedings truly and  
13 correctly reflects the exhibits, if any, offered by the  
14 respective parties.

15 WITNESS MY HAND this 31<sup>ST</sup> day of  
16 January, 1995.

17 

18 LLOYD E. BILLUPS, CSR #149 & OFFICIAL COURT REPORTER  
19 76TH JUDICIAL DISTRICT, STATE OF TEXAS

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Certification Number of Reporter: 149

Expiration Date of Certification: 12/31/96

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